(20,390.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1906.

No. 425.

SAMUEL B. RAYMOND, COUNTY TREASURER OF COOK COUNTY, ILLINOIS, AND *EX OFFICIO* COUNTY COLLECTOR OF COOK COUNTY, ILLINOIS; JOHN J. HANBERG, HIS SUCCESSOR AS SUCH COUNTY TREASURER AND COUNTY COLLECTOR, ET AL., APPELLANTS,

vs.

CHICAGO EDISON COMPANY.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS.

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1 In the Circuit Court of the United States for the Northern District of Illinois, Eastern Division.

26163.

CHICAGO EDISON COMPANY
vs.
SAMUEL B. RAYMOND, County Treasurer, Cook County, Illinois, and *ex officio* County Collector of Cook County, and JOHN J. HANBERG, His Successor in Office as County Treasurer of Cook County, Illinois, and *ex officio* County Collector of Cook County, Illinois, and *ex officio* Town Collector of the Town of South Chicago, and MAURICE FITZGERALD, Town Collector of the Town of South Chicago and the City of Chicago.

Mr. William G. Beale, Mr. Gilbert E. Porter, Mr. Buell McKeever, Solicitors for Complainant.

Mr. James Hamilton Lewis, Mr. David K. Tone, Mr. Harry A. Lewis, Mr. William F. Struckman, Solicitors for Defendants.

2 Pleas in the Circuit Court of the United States for the Northern District of Illinois-Eastern Division, in Chancery sitting at the United States Court room, in the City of Chicago in said District and Division before the Honorable Peter S. Grosscup, Circuit Judge of the United States for the Seventh Judicial Circuit, on Wednesday, the twenty-fifth day of July, being one of the days of the regular July Term of said Court, in the year of our Lord one thousand nine hundred and six and of our independence the one hundred and thirty first year.

MARSHALL E. SAMPSELL, *Clerk.*

3 In the Circuit Court of the United States for the Northern District of Illinois.

26163.

CHICAGO EDISON COMPANY
vs.
MAURICE FITZGERALD, Town Collector of the Town of South Chicago, and SAMUEL B. RAYMOND, County Treasurer and *ex-officio* County Collector of Cook County.

Be it remembered that on this day to-wit: the thirteenth day of February, 1902, come the complainant in said entitled cause by its solicitors, Messrs. Isham, Lincoln and Beale and filed in the clerk's office of said Court its certain Bill of Complaint in words and figures following to-wit:

4 In the Circuit Court of the United States, Northern District of Illinois, Northern Division.

CHICAGO EDISON COMPANY
vs.
MAURICE FITZGERALD, Town Collector, ET AL.

Bill for Injunction.

Isham, Lincoln & Beale, Solicitors for Complainant.
Original filed February 13, 1902.

4½ UNITED STATES OF AMERICA,
Northern District of Illinois, Northern Division, ss:

In the Circuit Court of the United States in and for the Northern District of Illinois.

To the Judges of the Circuit Court of the United States for the Northern District of Illinois:

Chicago Edison Company, a corporation existing under the laws of the State of Illinois, and a citizen of said state, brings this its bill against Maurice Fitzgerald, Town Collector of the Town of South Chicago (commonly and sometimes hereinafter called the "South Town"), in the City of Chicago, County of Cook and State of Illinois, and against Samuel B. Raymond, County Treasurer and *ex-officio* County Collector of said county, both said defendants being citizens of said state and inhabitants of said district.

And thereupon your orator complains and states as follows:

1. Your orator for many years past has been and is now extensively engaged in said City of Chicago in the business of generating, at its various establishments or stations, electric current for lighting and power purposes, and of selling and distributing such electric current to its various customers. It also carries on, incidentally, a small mercantile business in buying and selling certain
5 kinds of electrical supplies, mostly such as are frequently required by its lighting customers. It has received from said City of Chicago, by ordinance duly passed by the City Council of said city, the right for a term of years to construct and maintain, in the streets of said city, lines of wires or other electrical conductors to be used for transmitting electric current, and in pursuance of the right so conferred it has constructed, and is constantly constructing from time to time in said streets conduits and lines of wires for its uses. In the management of its business your orator has likewise acquired considerable necessary real estate in various sections of the city, being, in the main, large generating stations with machinery therein for the production of electric current. Its principal office and place of business is located in said Town of South Chicago.

2. The defendant Maurice Fitzgerald, is Town Collector of said

Town of South Chicago, duly elected by the voters of said town, and as such Town Collector is charged by law with the duty of collecting from the several persons named in the Town Collector's books, upon their delivery to him by the County Clerk of said county, the several sums of personal property taxes therein extended opposite the respective names of such persons. In case any person named in said books shall neglect or refuse to pay personal property taxes, as extended in said books, said defendant is authorized, and perhaps required, by law to collect such taxes by distress and sale of the goods and chattels of such person.

The defendant, Samuel B. Raymond, is County Treasurer of said county, duly elected by the voters of said county, and is also
6 *ex-officio* County Collector of said county. At some time between the 10th and 31st days of March, 1902, the defendant, Maurice Fitzgerald, as such Town Collector, will be required by law to return to the defendant, Samuel B. Raymond, as such County Collector, the tax books for 1901, heretofore received by said Town Collector from said County Clerk, and to make final settlement for the amount of taxes placed in his hands for collection. If it shall then appear from said tax books so returned that any person mentioned therein shall have failed to pay the personal property taxes extended against such person, said defendant, Samuel B. Raymond, as such County Collector, is then charged by law with the same duties, and may proceed in the same manner, for the collection of such personal property taxes as is provided in the case of all town collectors, and is required to collect the same by distress and sale, if necessary. For the due protection of your orator, and the complete effectiveness of the decree of this court, both said persons are proper and necessary defendants to this bill.

3. On or about the 26th day of June, 1900, your orator appeared by its counsel before the Board of Assessors of Cook County, a body of duly elected officers of said county authorized by law to assess the value of all real and personal property of persons and corporations owning property within said county, and presented to said Board of Assessors full information of all property owned by your orator in said county on the 1st day of April, 1900, real and personal. Your orator did not file with said Board of Assessors a schedule in the pre-
cise form set forth in the statutes of the State of Illinois, be-
7 cause of the practical difficulties involved in the preparation of such schedule covering your orator's peculiar property, in different towns, much of it consisting of underground conduits, constructed of cement and other material, and as difficult to value as a well or a post-hole would be; but your orator submitted to said Board of Assessors a full and correct statement of your orator's investment account, that is to say, of the aggregate property and assets owned by your orator upon the 1st day of April, 1900, and of its cost, together with amount of your orator's indebtedness and outstanding capital stock at that date. Said statement was, in fact, your orator's condensed balance sheet, showing its assets and liabilities at the end of its fiscal year, March 31, 1900, and among other things, made the following true showing in respect to your orator's

property, capital stock and indebtedness, namely: plants, real estate and franchises, $10,817,675.97; capital stock, $5,971,100; indebtedness, consisting of five per cent. first mortgage bonds and six per cent. debentures, $4,808,000. Subsequently said Board of Assessors duly assessed your orator's property, or made an assessment against your orator in respect to its property, pursuant to law.

Thereafter, on or about the 17th day of July, 1900, your orator, in response to notice, appeared, by its counsel, before the Board of Review of Cook County, a body of duly elected officers of said county authorized by law, among other things, to reduce or increase the real and personal property assessments of persons and corporations owning property in said county, and likewise submitted to said Board of Reviews the same statement which your orator had previously submitted to said Board of Assessors. No change was
8 then made by said Board of Review in the assessment of your orator's personal property as previously determined by said Board of Assessors, but thereafter a horizontal reduction of twenty per cent. was made by said Board of Review in the assessment of all personal property in said county, including the personal property owned by your orator. Said Board of Review likewise reviewed the assessment placed by said Board of Assessors upon the city lots owned by your orator in said county on the 1st day of April, 1900. The full valuation of all the real and personal property owned by your orator in said county on the 1st day of April, 1900, as finally fixed by said Board of Review for the purpose of taxation, was $2,970,970.

As your orator had so submitted to said Board of Assessors the information hereinbefore mentioned your orator did not file with said Board of Assessors any statement specifically in conformity with section 32 of the Illinois general Revenue Law of 1872, but your orator avers that in omitting to file such statement your orator did not in any way intend to conceal its assets from said Board of Assessors, nor from any other assessing officers of the State of Illinois, for the purpose of escaping taxation, nor did it, in so doing, intentionally seek to evade any provisions of the law of said state. On the contrary, your orator avers that it has, at all times, been willing to submit, and has submitted, to said Board of Assessors as well as to said Board of Review, full and complete statements of all of its property, both real and personal, in order that it might be justly assessed upon its property in the same proportion as the property of other persons and corporations should have been or should be
9 assessed. Your orator did not attempt to state specifically the fair cash value nor the market quotations of its bonds and of its shares of stock, because, among other things, it had no means of ascertaining such value, and such market quotations were matters of public knowledge as well known to said Board of Assessors as to your orator.

4. The regular annual meeting for the year 1900 of the State Board of Equalization of the State of Illinois, (said State Board being a body of officers duly elected by the voters of the State of Illinois, and charged by law with the duty, among others, of review-

ing and equalizing assessments throughout the state, and of determining and fixing the value of the capital stock, including the franchises, of certain classes of corporations), was convened at Springfield, in said state, on or about the 11th day of September, 1900.

At said meeting, said State Board of Equalization, ascertained and determined that in order to bring the assessed value of personal property and of city lots in Cook County to the state average, as required by law, an addition of 10 per cent. should be made to the assessed value of the personal property and to the city lots in said county, as fixed by said Board of Review, and such addition was accordingly made by said State Board, and was in due course certified to the County Clerk of said county. As a result of such increase by said State Board the basis and standard of assessment throughout said state was judged and determined by said State Board to be made uniform, and as a further result the total valuation of all property owned by your orator on the first day of April, 1900,
10 in said county, and there locally assessed, as determined by said Board of Review and so equalized by said State Board, was finally fixed for all purposes of taxation at the sum of $3,268,070, and the assessed value of said property was finally fixed at the sum of $653,614. All such property required by law to be locally assessed is known as "tangible property" under the statutory provisions relating to the assessment of corporate capital stock, although such property frequently includes some property not strictly or technically "tangible," as for example credits, rights of way, and other contract rights. All of your orator's property, real and personal, taxable in Illinois for the year 1900, and required to be assessed by local assessors was located in or was taxable in said county and was included in and covered by the foregoing equalized assessment.

At said session of said State Board your orator also appeared by its counsel and gave information as to its property, its shares of capital stock and indebtedness; and evidence and information in respect thereto were also submitted by said Board of Assessors of Cook County, and by others. The information given by your orator was the same, or included the same, previously submitted to said Board of Assessors and to said Board of Review. Upon consideration of the matter, said State Board determined and fixed, at its regular open session, the fair cash or full value of the capital stock, including the franchise, of your orator for purposes of taxation in 1900 at the sum of $1,625,000, over and above said equalized full value of your orator's said tangible property, and determined and fixed the assessed value of said capital stock, including the
11 franchise, for purposes of taxation in said year, at the sum of $325,000, which assessment fully appears in and by the official records showing the proceedings of said State Board. No reason is known to your orator why said assessment was not a reasonable and sufficient assessment in proportion to the assessments of tangible property, and especially of personal property, including taxable, corporate, capital stock and franchises, made generally in said county and throughout the State of Illinois, and your orator

is informed and believes, and so states the fact to be, that it was such reasonable and sufficient assessment, according to the judgment of said State Board, the body authorized by law to determine the matter.

5. The aforesaid assessed value of your orator's capital stock, including the franchise, after having been recorded in the official proceedings of said State Board, was duly certified to the Auditor of Public Accounts of the State of Illinois, and by said last named officer was certified to the County Clerk of Cook County, and taxes against such assessed value were duly extended upon the tax books for the year 1900, together with the taxes against said tangible property which had been assessed against your orator for taxation.

6. Thereafter, on or about the 6th day of February, 1901, your orator paid to the then South Town Collector, being a former Collector of said town, the sum of $27,192.75, representing the total amount of the taxes levied, and so extended against its capital stock, including its franchise, as so assessed by said State Board of Equalization, (all said capital stock taxes being payable
12 in said town), and also paid all its other personal property taxes payable in said Town of South Chicago for the year 1900, and for such payment received a receipt and acquittance in full for all State, County, City, Drainage, Library, South Park and School taxes, and for all other taxes, due from it for the year 1900 in respect to its personal property taxable in said Town. Your orator has also seasonably paid all other taxes levied against it in the State of Illinois for the year 1900, except the subsequently extended capital stock taxes, under a second capital stock assessment, hereinafter complained of.

No part of the money so paid by your orator to said former Town Collector in full discharge of its personal property taxes for 1900 in the said town, has ever been returned or tendered back to your orator, but on the contrary, said money has been paid over by said former Town Collector, less his commission for collection, either directly or through said County Treasurer, to the City of Chicago and other taxing or public bodies entitled to receive the same, and has been used or is still retained by such bodies.

7. While said State Board of Equalization was in session, as aforesaid, before any final action had been taken by said State Board to determine and fix the proper assessment to be made upon the capital stock, including the franchise of your orator, for the purpose of taxation for the year 1900, a petition of mandamus was filed in the Circuit Court of Sangamon County, Illinois, on or about the 10th day of November, 1900, by the People of the State of Illinois at the relation of one Catherine Goggin, a resident of Cook county, and of one Robert C. Steele, a resident of Sangamon County, Illinois, against the individual members
13 of said State Board, in which petition it was charged, among other things, that said State Board fraudulently intended to adjourn its session without making any assessment upon the capital stock, including the franchises of your orator, and of twenty-two other corporations doing business in said City of Chicago, and in-

tended illegally to neglect and refuse to discharge the statutory duty obligatory upon it; and said petition prayed that a writ of mandamus issue against the members of said State Board, commanding them to make an assessment for the taxes of 1900 on the capital stock, including the franchises, of your orator, and of the other corporations therein mentioned. Neither your orator nor any of the said other corporations were made parties defendant to said petition, nor ever became parties thereto. Said petition set forth your orator's capital stock and indebtedness at the same amounts stated by your orator, as aforesaid, to said State Board, to said Board of Review, and to said Board of Assessors. An answer to said petition was filed by the said defendants therein about the 24th day of November, 1900, in which said defendants denied that they had refused or intended to refuse to discharge their duty as members of said State Board. Thereafter, as above set forth, said State Board assessed the capital stock, including the franchise, of your orator, and the capital stock, including the franchises, of more than three hundred other corporations, subject to similar capital stock taxation in the State of Illinois, and afterwards, to wit, on the 3d day of December, 1900, said Board adjourned *sine die*.

On or about the 16th day of December, 1900, said mandamus
14 proceeding was continued at the request of the petitioner therein, and no action whatever appears from the record of said case to have been thereafter taken in said case by either party until on or about the 12th day of March, 1901. In the meantime as aforestated your orator had in due course, and without protest, paid the taxes spread upon said capital stock assessment in the belief that said assessment and the taxes spread thereon were legal and final. During the latter part of March, 1901, more than a month after such payment, said mandamus case was tried, and on or about the first day of May, 1901, a final judgment was rendered by said Circuit Court of Sangamon County, ordering a writ of mandamus against the members of said State Board, requiring it to convene and to assess for taxation for the year 1900, the capital stock, including the franchises, of your orator, and of other corporations mentioned in said petition. Said judgment did not directly or expressly declare that the assessment upon the capital stock of your orator previously made by said State Board for the year 1900, was fraudulent and void, and that the same be vacated and considered no assessment. From the judgment so rendered, an appeal was prayed by said defendants therein to the Supreme Court of Illinois. At the hearing of said appeal counsel for your orator appeared before said Supreme Court and asked to be heard, *amicus curiæ*, on behalf of your orator, but said request was denied, the chief justice of said court stating that it was not in accordance with the practice of the court to hear counsel, *amicus curiæ*, in behalf of a private interest. The defense to

said petition for mandamus was rested almost wholly on ob-
15 jections to jurisdiction and other technical grounds. No evidence was introduced in said Circuit Court of Sangamon County, in support of the merits of the assessment theretofore made of the capital stock, including the franchise, of your orator for

1900, and no argument was made either in that court or in said Supreme Court in support of the merits of said assessment. On or about the 24th day of October, 1901, a decision was rendered by said Supreme Court affirming said judgment of said Circuit Court of Sangamon County, and on or about the 2nd day of November, 1901, a writ of mandamus was issued out of said Circuit Court of Sangamon County in said mandamus proceeding, and said writ was thereafter served upon the members of said State Board of Equalization. Said writ ordered a capital stock assessment against twenty of the corporations mentioned in said petition, including your orator, and the material portion of said writ was in the words and figures following, to wit:

"Now, therefore that justice may at once be done, you the said State Board of Equalization and the members thereof, and each of you are hereby commanded to convene at the Capitol Building in Sangamon County and State of Illinois, and there forthwith to value and assess the capital stock, including the franchises, of each of said corporations and companies herein named, to wit: Chicago City Railway Company, West Chicago Street Railroad Company, North Chicago Street Railroad Company, Chicago Union Traction Company, People's Gas Light and Coke Company, Chicago Telephone Company, Chicago Edison Company, Chicago Consolidated Traction Company, Chicago Electric Transit Company, Chicago and Jefferson Urban Transit Company, Cicero and Proviso Street Railway Company, Evanston Electric Railway Company, North Chicago Electric Railway Company, North Side Electric Street Railway Company, Ogden Street Railway Company,
16 Chicago North Shore Street Railway Company, South Chicago City Railway Company, Chicago Passenger Railway Company, Chicago West Division Railway Company, North Chicago City Railway Company, as of the first day of April, A. D. 1900, in the manner provided by law, so as to ascertain and determine respectively as to each of said corporations, the fair cash value of its capital stock, including the franchise, over and above the assessed value of the tangible property of such corporation for the year 1900. And it is further ordered and commanded that in arriving at said valuations and assessments of the capital stock, including the franchises of the corporations herein named, the said State Board of Equalization and the members thereof, and each of them shall from the best information obtainable by it and them, ascertain and take into consideration, among other things, as to each such corporation, as the same was on the 1st day of April, 1900, the market value, or if no market value, then the fair cash value of its shares of stock and the total amount of all its indebtedness, except the indebtedness for current expenses, excluding from such expenses the amount paid for the purchase or improvement of property and the assessed or equalized valuation of all tangible property of said corporations, respectively, on said April 1, 1900.

And you are further commanded to direct the respective assessments so made to be certified by the Auditor of Public Accounts to the County Clerk of Cook County, that the taxes for all purposes

thereon, may be extended by said clerk for the year 1900, and you are further commanded to make return to this court on the 22nd day of November, A. D. 1901, in what manner you have complied with this order."

No assessment was ordered in respect of other corporations not mentioned in said writ and previously assessed, as aforesaid, upon their capital stock along with your orator.

8. Thereafter the regular annual meeting of the State
17 Board of Equalization for the year 1901, was convened at Springfield on the 10th day of September, 1901. By reason of an intervening election, prior to January 1, 1901, the membership of said Board had largely changed. Of the twenty-two members comprising said Board in 1900 only ten remained on said Board in 1901 and the remaining twelve members, constituting a majority of said Board, were new members, who had, therefore, taken no part in the assessment of the capital stock of corporations for 1900. While said Board was in session in 1901 said writ of mandamus under the said judgment of said Circuit Court of Sangamon County (which writ was in fact a second, or *alias*, writ), was duly served upon its members. Your orator was given opportunity by said Board to appear before it and to make suggestions relative to the proposed new assessment, and your orator's counsel accordingly appeared on your orator's behalf before said Board, and submitted to said Board two sworn statements respecting the property, the indebtedness, and the shares of stock of your orator on the 1st day of April, 1900. In one of said statements your orator requested and insisted that the capital stock assessment of $325,000, which had already been made by said Board for the purposes of taxation for the year 1900, and on which your orator stated that the taxes had been already paid, should be deducted from any proposed new assessment to be made or attempted by said Board against your orator in obedience to said writ. Your orator in said statement, also requested and insisted that said Board, after ascertaining the value of your orator's capital stock, including the franchise, should deduct therefrom such amount as should
18 be found necessary to equalize the capital stock valuation of your orator with the valuation placed upon other property, generally, in Cook County and throughout the State, for purposes of taxation. In order that said Board might have before it information to aid it in determining what proportion of full and actual values of property in Cook County and throughout the State had been adopted by local assessing bodies for the purposes of taxation, your orator, in said last mentioned statement, submitted to said Board various facts tending to show that the basis of assessment of real and personal property in Cook County was not more than one-fifth of 55 per cent. of the fair cash value of such property. In the other of said statements your orator requested and insisted that one-fifth of the amount of your orator's capital stock representing an investment by your orator in patent rights or licenses (which are not subject to taxation by the authorities of the State of Illinois), should likewise be deducted from whatever capital stock assessment might thereafter be made or attempted by said Board against your orator for that year in

obedience to said writ of mandamus. In so appearing and submitting said statements your orator expressly stated that it objected to the proposed new assessment and reserved its right to contest such new assessment if made. True copies of said statements are hereto annexed, marked respectively exhibits "A" and "B."

On or about the 19th day of November, 1901, said Board of Equalization by its counsel who had represented it throughout said mandamus suit appeared in said Circuit Court of Sangamon County, and applied in behalf of said Board for an extension of time within
19 which said Board might make its return to said mandamus writ. Said application was denied, and in manner and terms which were understood by many, if not by all, of the members of said Board, and by said Board, as being menacing to the members of said Board, and as laying down specific instructions to them without leaving them any substantial discretion respecting the method and basis of making the new assessment commanded. Among other things the judge holding said Circuit Court of Sangamon County and so denying said application made the following observations:

"The contention is made that the mode of procedure is new to the Board, and that it requires more time. There is no reason the court sees why they should have proceeded otherwise than as commanded in the writ. The law is the same to-night as it was a year ago or two years ago, as far as taxation is concerned in the State of Illinois. There has just simply been a declaration by the highest tribunal of this State that property must be assessed according to the manner prescribed by law and the statute *at its fair cash value.* * * *

It is said further that the amount of work that they have had to do prevented them from devoting sufficient time to this. As the court views this case, no great amount of time is necessary for that Board to perform their duty. This court decided that what is ordered in the writ to be done, and the Supreme Court affirmed that decision. The decision is explicit. There is no reason why any member of that Board should fail to understand exactly what his duty is. *All this talk about compilations, as to whether they should proceed on that line, or consider this thing or that thing, this amount of per cent. or that amount of per cent. of valuations, is just so much matter to quibble about.* This assessment could have been made before the application for the remanding order. It could have been made
20 in a very short time after the writ issued. This is one of the things that they should do. This is one of the orders they should obey, because the time is fixed. They may put off to some other time the assessment of other classes of property, the general assessment for this year, but the assessment of the particular property mentioned in that writ is fixed for a particular date. That is the time they should have addressed themselves to early in the session, if they wanted to comply with the order of the court and obey the law, and that work they must complete at the time fixed."

Thereafter, on the 20th day of November, 1901, in obedience to said writ of mandamus said State Board again determined and fixed for purposes of taxation the assessed or one-fifth value of the capital stock, including the franchise, of your orator, as of the 1st day of

April, 1900, and for the year 1900, at the sum of $1,800,761, all of which fully appears in and by the official record showing the proceedings of said Board.

Your orator is informed and believes, and therefore states the fact to be, that said Board, in arriving at the above mentioned amount, used the following method or basis of valuing the capital stock, including the franchise, of your orator, namely:

Full value of total shares of stock (59,711 shares) taken at $125 a share	$7,463,875
Indebtedness taken at par	4,808,000
Total value fixed by State Board	12,271,875
Assessed or 1/5 value of same	2,454,375
Equalized assessed value of tangible property assessed by local assessors, deducted under requirements of Section 3 of the Revenue Law	653,614
Net assessment of capital stock, including the franchise, being excess of assessed value of capital stock over equalized assessment of tangible property	$1,800,761

21 Said Board of Equalization, within a few days after said 19th day of November, also made new capital stock assessments for 1900 against the nineteen other corporations mentioned in said mandamus writ, but did not make any new capital stock assessments for 1900 against more than three hundred other corporations not mentioned in said writ and subject to capital stock taxation, and previously assessed as aforesaid.

Subsequently said State Board assessed the capital stock, including the franchises, of your orator and of corporations generally, (so far as deemed subject to capital stock taxation), for the year 1901. Your orator is informed and believes and so states the fact to be that in determining the amount so to be assessed for 1901 said Board first ascertained the fair cash value of the capital stock, including the franchise, of each corporation deemed subject to assessment, and then equalized such valuation, pursuant to its new rules, with the equalized valuations made for purposes of taxation against other property in the state, and in so doing deducted from such capital stock valuation 30 per cent. thereof. Such reduction represented the opinion and judgment of said Board to the effect that uniform undervaluation of property had been practiced for purposes of taxation throughout the state by assessing officers to the extent of at least 30 per cent., which undervaluation said Board was powerless to correct. Your orator is further informed and believes and so states the fact to be, that the same or a greater percentage of uniform and general undervaluation for the purposes of taxation, was believed by said Board to exist in the year 1900; that the facts relative to such undervaluation for
22 the year 1900 were well known to said Board; that said board was likewise powerless to correct such undervaluation

in 1900; and that if said Board had not believed itself to be under specific instruction from said Circuit Court of Sangamon County, or one of the judges thereof, through said writ of mandamus and otherwise, said Board would have equalized said new capital stock assessment against your orator for the year 1900, and would have put it upon a uniform basis with the assessment of other property, locally assessed, by reducing to the extent of at least 30 per cent. your orator's capital stock valuation as determined in connection with said new assessment. Among other things it was well known to said Board that the equalized assessed valuation of property locally assessed, for the whole state of Illinois, and particularly for Cook County, in 1901, was considerably higher than in 1900, so that if a reduction of 30 per cent. for equalization in 1901 was proper a larger reduction was naturally required for equalization of capital stock valuations in 1900. The published proceedings of said Board for 1901 (pages 174, 175) show the equalized local assessments to have been for Cook County, in 1900, $306,957,900, in 1901, $365,191,329, and for the entire state, in 1900, $809,733,405, in 1901, $891,448,546. They also show the similar equalized assessments in 1899 to have been for Cook County, $381,548,581, and for the entire state, $953,099,468.

In November, 1900, said State Board adopted certain rules for making capital stock assessments, and rescinded all its previously existing ones. Said rules of November, 1900, were subsequently held invalid in said mandamus proceeding, but said Board did not adopt any new rules on said subject until the 10th day of
23 December, 1901, and therefore had no rules, as required by law, concerning its mode of making capital stock assessments at the time when it made said second capital stock assessment for 1900 against your orator. December 10, 1901, said Board adopted new rules under which it made its capital stock assessments for 1901, and which in terms provided for the *equalization* of capital stock valuations, so that corporations and associations might be "assessed as nearly as practicable upon a uniform basis with other property throughout the state." The proceedings of said Board for 1901 distinctly report and show that such equalization was in fact made, but that no such equalization was made in respect to said second capital stock assessment for 1900.

In fixing said second assessment for 1900 upon the capital stock of your orator at the sum of $1,800,761, said Board wholly ignored the former assessment made by it in November, 1900, and failed to make any reduction in said new assessment on account of the former one though requested so to do; and said Board also failed to make any reduction in said new assessment for the portion of your orator's capital stock invested in patent rights or licenses, as aforesaid.

Your orator does not charge that the members of said Board intentionally and wilfully and of their own volition imposed upon your orator an excessive new assessment upon your orator's capital stock, including the franchise, as aforesaid, but your orator is informed and believes, and so states the fact to be, that said Board, in making said new assessment, and in failing to make the proper reductions

requested by your orator, as aforesaid, felt itself to be com-
24 pelled in its action by said Circuit Court of Sangamon County, to be under specific instructions from said court, and to be debarred from the exercise of independent judgment and discretion. Said new assessment was in fact reported to said court by a return to said writ of mandamus and was expressly considered and approved by said court.

9. Said second assessment for the year 1900 of your orator's capital stock, including the franchise, after having been recorded in the official proceedings of said State Board, was duly certified by it to the Auditor of Public Accounts of Illinois, and by said last named officer was certified to the County Clerk of Cook County. Said County Clerk has, in connection with his extension of taxes generally for 1901, made an extension of taxes upon said new capital stock assessment, as deemed by him to be required by law, and has recently certified and delivered to said defendant, Maurice Fitzgerald, as Town Collector of said Town of South Chicago, where any capital stock tax against your orator is properly payable, a tax book or tax books, with a warrant or warrants annexed thereto as required by law, authorizing and requiring said defendant to enforce the collection according to law of all the taxes so extended against such new and second capital stock assessment. The aggregate amount of new and additional capital stock taxes now required to be paid by your orator for the year 1900 in accordance with such tax extension is $148,805.91.

10. Your orator avers, upon information and belief, that in esti-
mating and determining the aggregate rate of taxation to be
25 extended upon said new capital stock assessment against your orator said County Clerk based his calculation upon the equalized assessed valuation of property in said town of South Chicago for 1900, plus the amount of said new capital stock assessment, and thereby fixed and determined the aggregate rate of such taxation to be 7.87 per cent, being slightly less than the aggregate rate originally extended for the year 1900 in said town. At that rate the total taxes upon said new capital stock assessment against your orator would be $141,719.89, but your orator further avers, upon information and belief, that said County Clerk unlawfully, although in the exercise of his honest judgment, increased said amount to $148,804.91, and that the additional amount of $7,086.84 represents a penalty attempted to be imposed upon your orator under the supposed authority of section 276 of the Illinois General Revenue Law of 1872, for alleged failure on the part of your orator to pay said new capital stock taxes for 1900 at some earlier date. As it was manifestly impossible for your orator to pay the amount of said new capital stock taxes until the new capital stock assessment had been determined by said State Board, and until said taxes had been duly spread upon the tax books by said County Clerk, your orator has not been delinquent in respect to the payment of said taxes within the meaning of said section, and said County Clerk had no authority to impose said penalty or any penalty upon your orator, and the law of Illinois does not authorize any such penalty.

11. Said new capital stock assessment for 1900 against your orator is illegal, unequal, wrongful and in violation of the Constitution of the United States, as well as in violation of the Con-
26 stitution of the State of Illinois, and is so for the following reasons, among others:

(1) The first or original capital stock assessment of 1900, made in December, 1900, and recorded, certified, extended and collected, as aforesaid, has never been vacated by any court of competent jurisdiction, in any judicial proceeding to which your orator was a party. In said mandamus proceeding in said Circuit Court of Sangamon County, said court had no power or jurisdiction under any statute of Illinois, or otherwise, to annul and vacate said original capital stock assessment made against your orator during the pendency of that proceeding, and the formal judgment of the court does not annul and vacate said assessment but ignores it. Your orator was not a party to said proceeding, and had no opportunity to be heard therein. Said original assessment was *prima facie* valid and legal. Your orator was entitled to rely, and did rely, upon said original assessment as the final capital stock assessment against your orator for the year 1900, and such original assessment could only be set aside, if at all, in some proceeding to which your orator was a party. The making of said new assessment by said State Board in November, 1901, and the collection now being attempted of said taxes extended upon such assessment constitute a taking of your orator's property without due process of law, and are in violation of the Fourteenth Amendment to the Constitution of the United States, and of the Constitution of the State of Illinois.

(2) After having made said original capital stock assessment against your orator in December, 1900, and after having ad-
27 journed its annual session for that year, said State Board lost all power and jurisdiction to make a new capital stock assessment for 1900 against your orator. Said new assessment was made without authority of law and is void, and the collection of said taxes extended upon said new assessment is a taking of your orator's property without due process of law and a violation of said Fourteenth Amendment, and of the Constitution of the State of Illinois.

(3) As it felt compelled to do under the direction of said Circuit Court of Sangamon County, said State Board selected out of the body of property owners in Illinois and in Cook County your orator and nineteen other corporate taxpayers, and subjected your orator and said nineteen other corporate taxpayers to an additional, oppressive, and discriminating capital stock assessment, whereby it is sought to subject them to more than their proportianate share of taxation, and by such unequal and unlawfully increased assessment and taxation your orator is denied the equal protection of the laws guaranteed by said Fourteenth Amendment.

(4) According to the construction placed by the Supreme Court of the State of Illinois in said mandamus case upon the rules adopted by said State Board in November, 1900, and under which said original capital stock assessment against your orator was made, the item of corporate indebtedness as an element to be taken into

account in ascertaining the value of corporate capital stock, including the franchise, was totally ignored by said Board in making said original assessment. Capital stock assessments were made by said
Board, under and according to said rules, against about three
28 hundred and thirty-four corporations for the year 1900, and
said Board in originally assessing the capital stock of all said corporations for 1900, must, therefore, be held to have intentionally ignored the indebtedness of such of said corporations as had indebtedness existing against them. Your orator avers that nearly all of said corporations had large indebtedness other than for current expenses.

The said writ of mandamus expressly required said Board to include, in determining the amount of a new capital stock assessment against your orator and said other nineteen corporations mentioned therein, the indebtedness (other than for current expenses) of your orator and of said other corporations, and said Board did include such indebtedness in determining and fixing the amount of said new capital stock assessment, and said Board thereby valued the capital stock, including the franchises, of your orator and of said nineteen other corporations upon a basis radically different from the basis used in valuing the capital stock, including the franchises, of more than three hundred other corporations subject to capital stock taxation in said Cook County and throughout the State of Illinois, and thereby unlawfully discriminated between your orator and the more than three hundred other corporations aforesaid, comprising the great body of corporations in the state subjected to a capital stock assessment for 1900. By such action of said Board, your orator has been deprived of the equal protection of the laws in violation of said Fourteenth Amendment, and is subjected to disproportionate taxation contrary to the constitution of the State of Illinois.

(5) The fourth paragraph of Section 3 of said Illinois
29 General Revenue Law of 1872, as subsequently amended,
under and in conformity with which said new capital stock assessment for 1900 was made, is as follows:

"*Fourth.* The capital stock of all companies and associations now or hereafter created under the laws of this State except those required to be assessed by the local assessors, as hereinafter provided shall be so valued by the State Board of Equalization as to ascertain and determine respectively, the fair cash value of such capital stock, including the franchise, over and above the assessed value of the tangible property of such company or association; such board shall adopt such rules and principles for ascertaining the fair cash value of such capital stock as to it may seem equitable and just, and such rules and principles when so adopted, if not inconsistent with this act, shall be as binding and of the same effect as if contained in this act, subject, however, to such change, alteration or amendment as may be found from time to time to be necessary by said board: *Provided,* that in all cases where the tangible property or capital stock of any company or association is assessed under this act, the shares of capital stock of such company or association shall not be assessed or taxed in this State. This clause shall not apply to the

capital stock or shares of capital stock of banks organized under the general banking laws of this State or under any special charter heretofore granted by the legislature of this State: *Provided, further,* that companies and associations organized for purely manufacturing purposes, or for the mining and sale of coal, or printing, or for publishing of newspapers, or for the improving and breeding of stock, shall be assessed by the local assessors in like manner as the property of individuals is required to be assessed."

Your orator is not a bank, nor is it a corporation organized for purely manufacturing purposes, or for the mining and sale
30 of coal, or for printing, or for the publishing of a newspaper, or for the improvement and breeding of stock. Said paragraph of the statutes of Illinois, and the practice followed in conformity therewith, arbitrarily and wrongfully discriminate between your orator and corporations organized for the purposes aforesaid, and by reason thereof said paragraph and said practice are in violation of said Fourteenth Amendment, in that they subject your orator to unequal taxation and thereby deprive your orator of the equal protection of the laws.

The discrimination and inequality in taxation contemplated by the last proviso of said paragraph from the statutes of Illinois have been held by the Supreme Court of said state not to violate section 1 of article IX of the constitution of said state, which section is as follows:

"The general assembly shall provide such revenue as may be needful by levying a tax, by valuation, so that every person and corporation shall pay a tax in proportion to the value of his, her or its property—such value to be ascertained by some person or persons, to be elected or appointed in such manner as the general assembly shall direct, and not otherwise; but the general assembly shall have power to tax peddlers, auctioneers, brokers, hawkers, merchants, commission merchants, showmen, jugglers, innkeepers, grocery keepers, liquor dealers, toll bridges, ferries, insurance, telegraph and express interests or business, vendors of patents, and persons or corporations owning or using franchises and privileges, in such manner as it shall from time to time direct by general law, uniform as to the class upon which it operates."

Said Illinois Supreme Court holds that said section permits inequality and lack of uniformity in the amount and extent of taxation, as well as in the manner of taxation. As so construed,
31 said section, and particularly the last clause thereof, is in violation of said Fourteenth Amendment, and constitutes a denial of the equal protection of the laws.

12. Said new capital stock assessment for 1900, if not absolutely void for the reasons hereinbefore set forth, is nevertheless excessive, and the taxes extended against it should be reduced to a certain extent, for the following reasons:

(1.) The sum of $27,192.75 paid by your orator as taxes upon its original capital stock assessment for 1900, as hereinbefore set forth, should have been deducted by said County Clerk from the amount of the taxes extended upon said new capital stock assessment

for the year 1900, and should now be deducted. If compelled to pay taxes twice on its capital stock, or on any part thereof, your orator would be wrongfully and unlawfully subjected, without any fault on its part, to double taxation, and would be to that extent deprived of its property without due process of law, and denied the equal protection of the laws, in violation of said Fourteenth Amendment to the Constitution of the United States.

(2.) Your orator has acquired in the operation of it- business the right to use certain patents under licenses from the Edison Electric Light Company, a corporation of the State of New York, which owns such patents. In payment for the use of such patent rights and licenses your orator had from time to time, prior to April 1, 1900, delivered to said Edison Electric Light Company shares of your orator's capital stock, the value of which on said first day of April,
1900, at $125 per share, was $565,625; also its bonds of the
32 par value of $72,000; and cash to the amount of $33,327.39;
making a total down to said date of $670,952.39. Said total represents the portion of your orator's capital stock invested in rights or licenses under United States patents, and is exempt from taxation under the authority of the State of Illinois. No part of said amount is invested in patented articles or tangible property of any kind. Such investment and corresponding exemption from capital stock taxation were seasonably communicated to said Board of Equalization, but said Board failed to reduce on account of said investment the amount of said new capital stock assessment for 1900 against your orator, and as a result thereof your orator unless relieved by this court will be obliged to pay taxes upon said patent rights or licenses to the amount of $10,560, levied by the taxing authorities of the State of Illinois, all of which your orator avers will be a violation of the constitution and laws of the United States.

(3.) Said Board of Equalization feeling itself compelled so to do, as aforesaid, and only because of such supposed compulsion, failed to equalize said new capital stock assessment against your orator for 1900 by an appropriate reduction to make your orator's assessment reasonably uniform with the assessment judged by said Board to have been made of other property generally; by reason whereof your orator is subjected to a greater burden of taxation for the year 1900 than other persons and corporations owning property in said Cook County and throughout the State of Illinois generally. Your orator, therefore, claims that unless a further reduction of at least
30 per cent. be made in the amount of taxes required to be
33 paid by your orator under said new capital stock assessment
for 1900, your orator will be deprived of the equal protection of the laws guaranteed to it under said Fourteenth Amendment and will be subjected to disproportionate taxation contrary to the Constitution of the State of Illinois.

(4.) The sum of $7,086.84 included in said new capital stock taxes for 1900 against your orator, as a penalty for alleged failure on the part of your orator to pay said new capital stock taxes at some earlier date, having been imposed without authority of law, said taxes should be further reduced by that amount.

13. Inasmuch as the taxes extended upon said original capital stock assessment for 1900 against your orator were paid by your orator without protest, your orator will be unable to recover from said Town Collector, or from said County Treasurer or from any one else, the amount of such taxes in an action at law; nor will your orator be permitted to interpose as a set-off in any action at law against your orator for the collection of said taxes extended upon said new capital stock assessment for 1900 aforesaid the amount so previously paid for capital stock taxes of 1900. Many of the illegalities and defects of said new capital stock assessment do not appear on the face of the record of the proceeding of said State Board, nor on the face of said tax book or books, and evidence *aliunde*, by which such illegalities and defects must be shown, is not competent evidence in an action at law to enforce the collection of said taxes, except in an application for judgment against real estate.

In case your orator should fail or refuse to pay said taxes
34 extended against your orator upon said new capital stock assessment for 1900, said defendant, Maurice Fitzgerald, as Town Collector as aforesaid, would be authorized, and perhaps required, and said defendant, Samuel B. Raymond, as such County Collector, would be required to enforce the collection of said taxes and to levy the same by distress and sale of the goods and chattels of your orator, and your orator has good reason to fear and does fear that such a proceeding may be undertaken unless restrained by this court. Such proceeding by distress and sale is substantially equivalent to a levy and sale under execution upon a judgment at law, and if undertaken against your orator, no defense hereinbefore set forth would be available or could be interposed on behalf of your orator to defeat it. Your orator's property consists largely of personal property, forming, with some real estate, an extensive electric lighting and power system by which electricity is furnished for lighting and power purposes to many thousand customers in residences and places of business in said City of Chicago, and many of said customers rely entirely upon electricity furnished by your orator for their artificial illumination and power. A levy of said taxes by distress and sale upon any part of your orator's said personal property would interfere with the operation of your orator's said system, embarrass and injure your orator's customers, and subject your orator to the danger of losing the property so levied upon without your orator's having any opportunity to test its rights by interposing a defense. Your orator would have no day in court, no opportunity to plead or offer proof in respect to its rights, and could
have no judicial decision thereon. The property so levied
35 upon and sold could not be recovered in an action of replevin, nor by any other legal proceedings.

Said capital stock taxes extended upon said new capital stock assessment are now a lien and a cloud upon your orator's personal property which should be removed.

The total amount of said illegal taxes spread upon said new capital stock assessments against your orator and said nineteen other corporations, mentioned in said writ of mandamus will approximate

the sum of Two Millions of Dollars. After collecting said taxes the defendant, Maurice Fitzgerald, as South Town Collector, is required by law to distribute such taxes in the proportions designated in his tax-book or books to the City Treasurer of the City of Chicago, the County Treasurer of Cook County, the Treasurer of the Sanitary District, and other bodies or officers entitled to receive them. If your orator, under compulsion and under threat of a distraint should pay said taxes to said Town Collector your orator would perhaps be entitled to maintain against said defendant, Maurice Fitzgerald, an action at law to recover the amount of said illegal taxes so exacted from your orator under compulsion; but such action at law would not afford your orator any substantial relief or protection in respect to such illegal taxes, for the reason that said defendant, Maurice Fitzgerald, has not sufficient assets and resources with which to satisfy any judgment which your orator might recover against him in such action at law.

Your orator might possibly likewise maintain an action against each of the taxing bodies receiving a proportion of such illegal
36 taxes, but a multiplicity of suits would result, from which this court, as a court of equity, can relieve it.

The City of Chicago will be entitled to receive as its proportion of said new capital stock taxes against your orator for 1900, approximately the sum of $45,851.88. Said City of Chicago has now greatly exceeded the constitutional limitation of its indebtedness, and any further indebtedness incurred by it at the present time would be null and void, and the collection thereof could not be enforced against said city. If, therefore, your orator under compulsion and threats of distraint, should pay the amount of the capital stock assessment aforesaid to said defendant, Maurice Fitzgerald, as Town Collector of the Town of South Chicago, and said defendant should thereupon distribute to the City of Chicago its proportion of said tax, your orator would be unable to maintain successfully an action at law against said City of Chicago to recover such amount, for the reason that said city could interpose in such action at law the defense that it had already exceeded the constitutional limitation of its indebtedness, and that any expressed or implied contract for the return of said money would be void.

The portion of said taxes which, if paid, would go to the state of Illinois, could not be collected back by your orator by any legal proceeding whatever, and if repayment could be compelled, after payment, from said City of Chicago and other taxing bodies, such repayment would not cover the costs including commissions deducted for the collection of said taxes, and could be made only through subsequent taxation of which your orator would necessarily, but wrongfully, have to bear its share.

37 By reason of the foregoing matters said new capital stock assessment and the threatened attempt by the defendants herein to collect the taxes extended upon said assessment, inflict upon your orator a great and irreparable injury, for which your orator has no complete and adequate remedy at law.

14. The premises considered your orator denies any lawful obli-

gation to pay any portion of said new capital stock taxes, and therefore makes no specific tender in respect thereto; but your orator submits the matter to the consideration of this court, and hereby declares itself willing and ready to pay, and hereby offers to pay, whatever amount, if any, this court may determine and adjudge that equity requires from your orator.

15. Your orator, therefore, prays that the defendants, and each of them, may be summoned to appear and answer this bill according to the usual practice in chancery (but not under oath, answers under oath being hereby expressly waived); that the court declare and decree that said new assessment of $1,800,731 upon the capital stock, including the franchise, of your orator for 1900, and the taxes of $148,805.91 extended thereon, are illegal and void and in violation of the Fourteenth Amendment to the Constitution of the United States and of the Constitution of Illinois; that the court perpetually enjoin the defendants, and each of them, from collecting said taxes, or any part thereof; that if a part only of said taxes shall be found by this court to be illegal and void, the relief herein prayed against the whole of said taxes may be granted as to so much thereof as shall be so found by this court to be illegal and void; that the de-
38 fendants be temporarily restrained from attempting in any manner to collect said taxes and every part thereof until the further order of this court; and that your orator may have such other and further relief as may be equitable and be necessary fully to secure and protect your orator's rights in the premises.

CHICAGO EDISON COMPANY,
By WILLIAM A. FOX,
Assistant Secretary.

STATE OF ILLINOIS, *County of Cook, ss:*

William A. Fox, being first duly sworn, deposes and says that he is Assistant Secretary of Chicago Edison Company, complainant in the above entitled cause; that he has read the foregoing bill of complaint and knows the contents thereof and that the matters and things therein set forth are true, except as to such matters and things as are therein stated to be made upon information and belief, and that as to all such matters and things, so stated upon information and belief, he believes them to be true.

WILLIAM A. FOX.

Subscribed and sworn to before me this 13th day of February, A. D. 1902.

WALDO F. TOBEY,
Notary Public.

ISHAM, LINCOLN & BEALE,
Solicitors and of Counsel for Complainant.

39 EXHIBIT A.

Statement to State Board of Equalization by Chicago Edison Company, of capital stock, etc., April 1, 1900, and April 1, 1901, to comply with Sec. 32 of an act of the Legislature of the State of Illinois, entitled "An act for the assesment of property, and the levy and collection of taxes," approved March 30, 1872.

April 1, 1900.

First:

Name of Company,—Chicago Edison Company.
Location of Company,—139 Adams street, Chicago, Illinois.
Principal office or place of business,—City of Chicago, Township 39 North, Range 14 East of the Third Principal Meridian.

Second:		Amount.
Amount of Capital Stock authorized		$6,000,000
Number of shares into which said Capital Stock is divided	60,000	
Third:		
The amount of Capital Stock paid up		$5,971,100
Number of shares actually issued	59,711	
Fourth:		
Market Value of Shares of Stock / Actual Value of Shares of Stock		See below.
Fifth:		
The total amount of all indebtedness, except the indebtedness for current expenses, excluding from such expenses the amount paid for the purchase or improvement of property		$4,808,000
40 *Sixth:*		
The full valuation, as fixed by local assessment, of		
Lands		None.
Lots		$970,970
Personal property		2,000,000
Total valuation of all tangible property of said Company, as fixed by Board of Review for April 1, 1900 (see below)		$2,970,970

April 1, 1901.

First:

Name of Company,—Chicago Edison Company.
Location of Company,—139 Adams street, Chicago.
Principal office or place of business,—City of Chicago, Township 39 North, Range 14 East of the Third Principal Meridian.

		Amount.
Second:		
Amount of Capital Stock authorized.....		$6,000,000
Number of shares into which said Capital Stock is divided.....	60,000	
Third:		
Amount of Capital Stock paid up.....		$6,000,000
Number of shares actually issued.....	60,000	
Fourth:		
Market Value of the Shares of Stock..... Actual Value of Shares of Stock.....		See below.
Fifth:		
The total amount of all indebtedness, except the indebtedness for current expenses, excluding from such expenses the amount paid for the purchase or improvement of property		$5,508,000
41 *Sixth:*		
The full valuation, as fixed by local assessment, of		
Lands		None.
Lots		$1,194,165
Personal property.....		3,715,000
Total valuation of all tangible property of said Company, as fixed by Board of Review, for April 1, 1901 (see below).....		$4,909,165

The foregoing statement for April 1, 1900, is given because of the issuance of a writ of *mandamus* from the Circuit Court of Sangamon County, ordering a new assessment of the capital stock of the Chicago Edison Company, and the capital stock of a few other corporations, for that year. By furnishing this information, or any information herein contained, the company does not intend to waive any right it may have to object to such new assessment for 1900, as it does hereby object, nor its right to contest hereafter the validity of such new assessment if a contest thereof shall seem advisable. But the information hitherto before the State Board of Equalization concerning the company for the year 1900 is in some respects incorrect and incomplete. This incorrectness was not discovered until the printing of the abstract of the record in the *mandamus* suit, wherein, among other things, the local assessment for 1900 of the company's *personal property* is erroneously stated at *too large* an amount, and of its *real estate* at *too small* an amount.

The company is informed that an erroneous statement for 1901 has been filed with the State Board, setting forth incorrectly
42 the local assessment of the company's tangible property for 1901. The statement fails, among other things, to report the

local assessment *as changed and finally fixed by the Board of Review.* The above figures are believed to be correct both as to 1900 and 1901.

The local assessments of the company's tangible property have been made upon correct and reasonably full information submitted each year to the local Board of Assessors and the local Board of Review. The course of this company in thus voluntarily giving information to the Board of Review particularly attracted public attention last July in the City of Chicago, and was extensively noticed in Chicago newspapers of about the middle of that month. There has been no attempt by the company to conceal its property from the assessing bodies, and it will be quite apparent that there is no attempted concealment here.

A capital stock assessment of $325,000, (being one-fifth of a full equalized capital stock and franchise valuation of $1,625,000), and on which the tax has already been paid, was made against the company for 1900 (see Proceedings of the State Board of Equalization for 1900, page 44), and that amount should be deducted from whatever capital stock assessment may hereafter be made by the State Board for that year in obedience to the writ of *mandamus.*

In the showing presented at the beginning of this statement, made out substantially according to the regular form prescribed by the State Auditor, no market or actual values have been set down for the shares of the company's stock, either in 1900 or in 1901. Such values cannot be accurately given, nor can they be properly
43 estimated without some explanatory observations. What is sought to be ascertained is the market or actual value of the total outstanding 59,711 shares of the company's stock on April 1, 1900, and of its total outstanding 60,000 shares of stock on April 1, 1901. There is no satisfactory way of arriving at the actual value of the company's total shares of stock outstanding, except through some estimate based upon their supposed market value. The company does not have any valuation figures of its own beyond its investment records, showing its expenditures from day to day upon its plant. But the cost of property, particularly of such property as is largely owned by the Edison Company, furnishes no satisfactory guide to its value, which is what it will sell for. The tangible property of the company is composed largely of personalty, and a considerable proportion of this has no saleable value, and practically no value at all, disconnected from the special uses to which it is devoted. Underground cement conduits and underground tunnels, constructed at large expense, are worthless for purposes of ordinary sale, just as a post-hole would be, and their value cannot be estimated like the value of houses or of furniture. The Company is engaged in the City of Chicago in generating and furnishing electric current for lighting and power purposes, and has an ordinance from the city authorizing it to lay its conductors under the surface of the streets.

The value of the company's ordinance is practically unascertainable, for the value depends upon the existence and the views of would-be purchasers and sellers, and the company, of course, does

not wish to sell its ordinance alone, without its other prop-
44 erty, while there are no known persons or corporations desiring thus to purchase it. The general tendency seems to be to overvalue so-called franchise ordinances, as may well be illustrated in respect to an ordinance which was granted in 1897 by the City of Chicago to the Commonwealth Electric Company, an electric lighting corporation in that city. The ordinance granted to the Commonwealth Company, is more liberal than the one belonging to this company, and has more than three times as many years to run, for it does not expire until 1947, while the ordinance of this company will expire in 1914. Yet the ordinance of the Commonwealth Company was sold—that is, the entire capital stock of that company, whose principal asset was its ordinance, was sold—for $160,000, after having been upon the market for sale for six months. Doubtless many people, talking in a loose way, have declared the Commonwealth ordinance "worth millions," but in fact its value is thus actually shown as not over $160,000. Such people usually know little or nothing about the conditions existing in respect to competition, and otherwise. They rarely give any thought to such elements as character and ability in management, and to other advantages. The Edison Company has strong and abundant competition in its business, as can readily be shown. There are many small plants in the City of Chicago, supplying in the aggregate a large number of customers. The Company has no monopoly, legal or actual, and it is liable to be subjected at any time to increased competition, which might greatly affect the value of its shares of stock.

The difficulty of estimating correctly the actual value of
45 the 60,000 shares of the company's stock April 1, 1901, or of the 59,711 shares of the company's stock, April 1, 1900, from market quotations, will readily be apparent upon a little reflection when it is seen that the market quotations of its shares are quite limited and inadequate. The company's shares of stock are not actually listed on any stock exchange, and although they are somewhat dealt in on the Chicago Stock Exchange, as "unlisted securities," the transactions in them are few and small. The total number of its shares bought and sold on the exchange in 1900 was only 1,592, while in 1901, down to and including October 25, when this information was obtained, the total number of shares sold was only 3,028. The stock market quotations, therefore, show merely what a small fraction of the company's shares have been sold for, and furnish a very unsafe guide to the value of the total number of shares, taken as a whole, or to the value of the company's entire property supposed to be represented by its shares of capital stock and its indebtedness. These shares so sold have fluctuated in price from $126 per share, on June 30, 1900, when twelve shares were sold at that price, to $180 on July 8, 1901, when that price was paid for only one share. The market quotations in such occasional and trifling sales is now about $160 per share, but the capital stock of the company has recently been increased. In 1900 there were two

shares sold March 28, for $162 each; eight shares sold April 2 for $151 each; and one share sold April 2 for $150. In 1901 there were fifty-three shares sold March 28 for $155 each, and seven shares sold April 3 for the same price. These sales were the ones nearest to April 1 in each year. The fluctuations in the stock market
46 prices of the company's shares have been due almost, if not quite, wholly to causes outside of the company's own condition, which has been exceptionally normal and steady. It has for a number of years earned and paid dividends at the rate of 8 per cent. per annum.

The poor reliance to be placed upon stock market quotations as a just index of the value of corporate property supposed to be represented by its shares of stock is well illustrated in the cases of certain stocks quoted upon the New York Stock Exchange during 1900 and 1901. Since January 1, 1900, Atchison, Topeka & Santa Fe common stock has ranged from 18⅝ to 91 dollars; Atchison, Topeka & Santa Fe preferred, from 58¼ to 108; Baltimore & Ohio, from 55¼ to 114½; Chicago, Burlington & Quincy, from 119⅛ to 199⅞; Colorado Fuel & Iron, from 29¼ to 136½; Diamond Match, from 119 to 153¾; General Electric, from 120 to 269½; Lake Shore, from 197 to 325; Missouri Pacific, from 38⅜ to 124½; Northern Pacific, from 45¾ to 1000; and Union Pacific, from 44⅜ to 133. Many elements and factors have influenced these fluctuations besides the value of the properties of the respective companies, such, for instance, as the rate of interest for time loans, which during the period mentioned has varied in New York from 3 per cent. to 6 per cent. As said by the Supreme Court of the United States, in speaking of the uncertain relation between the value of the property of a manufacturing and transportation company and the market quotations of its stock:

"The faith which a purchaser of stock in such a company has in the ability with which the company will be managed, and in the capacity of the company to make future earnings, may be
47 well or ill founded. It is but a matter of opinion which in itself is not property. While the value of the property is one of the material factors going to make up the market value of the stock, *yet it is plainly not the sole one.* Mere speculation has not uncommonly been known to exercise a potent influence on the market price of stock."

(Pullman Palace Car Co. *v.* Central Transportation Co., 171 U. S., 138, p. 155.)

In ascertaining under the law the fair cash value of a corporation's capital stock, including its franchise, this company understands that the Board does not assess *shares* of stock, either separately or in the aggregate, but simply makes use of the market value of shares as one factor to ascertain the total value of what is called "capital stock," in the revenue law. The Supreme Court of this state has repeatedly declared that the words "capital stock," as used in the revenue law,

do not mean *shares* of stock, either separately or in the aggregate, but mean *the property* of the corporation, in its entirety. See

Porter *v.* Rockford, R. I. & St. L. R. R. Co., 76 Ill., 561, 567-8.
Pacific Hotel Co. *v.* Lieb, 83 Ill., 602, 610-11.
Quincy Bridge Co. *v.* Adams County, 88 Ill., 615, 621.
O. & M. R. R. Co. *v.* Weber, 96 Ill., 443, 448, 453.
Keokuk and Hamilton Bridge Co. *v.* The People, 161 Ill., 132, 142-3.

To value the property of this company for 1900 and 1901 as equal to the sum of its indebtedness at par and of its total shares of stock, at respectively, $150 and $155 each would be an excessive and an unjust valuation.

48 In respect to the assessment ordered for 1900, the legal discretion of the Board to make, according to its own judgment, such an assessment of the capital stock including the franchises of the corporations named in the *mandamus* writ as it may think fair and just in proportion to the assessment of other property in the state is in no way impaired by the order of the court, or by the writ. The Board is not bound to be governed rigidly by stock market quotations in ascertaining the value of the total shares of stock of the corporations affected. The judgment of the Circuit Court, as well as the mandamus writ, so far as applicable to market quotations, do not go beyond requiring as to each of the corporations that the market value of its shares of stock shall be ascertained and "taken into consideration, *among other things.*" Assuming the legal effectiveness of the mandamus proceedings, which need not be here discussed, the Board appears to have, under the court order, precisely the same discretion, the same duty and the same obligation that it has in regard to capital stock assessments for the year 1901 against the same corporations.

In this connection a decision of the Supreme Court in the case of Walker *v.* The People, decided at the same term almost concurrently with the *mandamus* suit, will be found instructive. In that case, which arose under the inheritance tax law, the opinion of the court called attention to the expressions "value," "fair market value," and "actual value," appearing in section 11 of that law, and said:

"The appraiser and the county judge and the County Court *as not limited* in the valuation of property *to the market quotations* of the same, but, for the purpose of finding the fair cash value

49 of the same, they may use the quotations of the same on the public exchanges, private sales of such property, testimony as to the actual value of the same, and their own knowledge of the subject-matter."

That the Circuit Court was of opinion that other facts than market quotations have a legitimate bearing in determining the amount of any proper assessment against a corporation by the Board is clearly shown by the fact that the court admitted evidence, over objections, as to the dividends, net earnings and other business conditions of the corporations under consideration. (See Abstract of

Record, pp. 54, 56, 60, 61, 69, 103, 130, 134.) The Supreme Court held that the board erred in excluding from consideration the indebtedness of the corporations when determining the value of their entire assets, and that such indebtedness was one of the elements to be considered. The value of all the shares of stock and the indebtedness of a corporation *tend* to show the value of the entire assets of the corporation, including its franchise, and therefore the court held that they should be *taken into consideration, among other things,* but the court has not directed the Board to exclude from consideration any fact or facts having a bearing upon the value of all the property of the corporation.

One fact which ought to be taken into account is the effect of the proposed increased taxation of the company. This is decidedly material. It would not be fair to add largely to the company's assessment and taxes for 1900, while estimating the value of its capital stock with reference to a market price of its shares, unquestionably due in some degree to a lower assessment and lower taxation. High taxes inevitably mean increased expenditures and reduced
50 net income. Just how much effect higher taxes would have it is impossible to determine, but that they would have some effect is quite apparent from the fact that the recent decision of the Supreme Court in the *mandamus* suit caused the market prices of shares of stock of the corporations affected to drop considerably. October 24 a few shares of this company's stock were sold at 169½. Then came the decision, and the quotation of the shares promptly dropped to 160. A small part of this drop was, however, the usual result of the payment of a quarterly dividend of 2 per cent. The *mandamus* proceeding, and the proposed new capital stock assessment for 1900, have grown out of a demand in certain quarters for higher taxation of the corporations. It is clear that higher taxes and lower stock market quotations must run together. An exaggerated illustration will demonstrate this. Let it be supposed that on March 31, 1900, it had suddenly come to be understood that this company would have to bear greatly increased taxation for 1900, amounting to several hundred thousand dollars, and rendering necessary a considerable decrease in the rate of the company's dividends; it cannot be seriously doubted that in such case the market quotations for the company's shares, April 1, 1900, would on that account alone have been much lower. This illustration shows the principle involved, and the real question is merely one of degree—the degree of abatement or reduction which should be allowed in valuing the company's shares of stock, and its "capital stock," through the means of market quotations based upon an erroneous assumption of conditions different from that now appearing, an assumption
51 of relatively lower taxation. The principle is equally true and equally applicable for both 1900 and 1901, although its operation is more easily seen in respect to 1901, as no one needs to be told that largely increased taxation in 1900 would have correspondingly reduced the value and the quotations of the company's shares in 1901.

This company is entirely willing to pay its full, fair share of the

public taxes, but it objects to paying more than its just share. It considers over-taxation to be an injustice in the case of a corporation as much as in the case of an individual, and insists that due regard for the constitutional requirements of uniformity and proportionate valuation forbids that this company should be taxed upon its property more highly than any other person or corporation. After the fair cash value of this company's capital stock, including the franchise, shall have been ascertained, there arises the necessity, before the actual assessment, *of equalizing it with the valuations placed upon other property for purposes of taxation throughout the state.* The equalizing function is one of the most important functions of the Board, and it exists quite as distinctly with respect to capital stock assessments as with regard to any other work. It is believed to be the duty of the Board to assess the capital stock and franchise of a corporation upon the same basis, and only upon the same basis, as the other property of the state is assessed, after the same is equalized by the Board, and this has been the uniform practice of the Board, under its original rules as adopted in 1873, which practice has never been called into question. The order of the Circuit Court and the writ of mandamus, for instance, do not direct the
52 *basis* upon which the assessment shall be made, except to say that it shall be made under the statute, and that certain things, *among others,* shall be *taken into consideration* in making the assessment.

The original revenue act of 1872 required all property to be taxed at its fair cash value. The Board of Equalization, proceeding under this act and under the rules originally adopted, *always equalized* the assessments made by it upon capital stock with the assessment of other property in the state, by assessing it at the same percentage of its value at which they found the other taxable property of the state to be assessed.

In 1874 the Board added together the market or actual value of the capital stock and debt, and then deducted 40 per cent. thereof in order to ascertain the aggregate amount upon which the corporation should pay taxes, this deduction being made in order to make the assessment upon the capital stock of corporations at the same percentage of actual value as prevailed in respect to other property in the state. One of the columns in the assessment of capital stock of corporations in that year was headed as follows: "Capital stock and debt as equalized with the aggregate assessment of the state by deducting forty per cent. of market or actual value." (Proceedings of the Board, page 88.)

In 1876 a *resolution* was adopted by the Board, as follows:

"Resolved, that it is the opinion of this Board that the real and personal property of the state has been assessed at fifty per cent. of its cash value for the year 1876." (Proceedings of the Board, pages 7, 8 and 9.)

53 The assessment made upon the capital stock of corporations for that year shows that 50 per cent. of the actual cash value was deducted in order to equalize the assessment of the corporations

with the assessment of other property in the State. (Page 69, and following.)

A like *resolution* and assessment of corporations was made in 1877. (See Proceedings of the Board, pages 64 and 73.)

The following are quotations from the printed proceedings of the Board for the year 1877, the first being a quotation from the opinion of the attorney-general furnished to the Board, and the second being a report of the Railroad Committee, showing the basis upon which the assessment was made in order to equalize it with the assessment upon other property in the state:

"The cardinal principle upon which the statute is based, and which ought ever to be kept in view in construing any of its provisions, is to secure an equal and uniform assessment of all taxable property throughout the state in proportion to its value. Although the statute requires certain returns and documents to be placed before the State Board, it does not confine the Board to the information furnished thereby in the discharge of its delicate and responsible duties. In the assessment of such property as the State Board is authorized to assess, it has the right to act upon the judgment of its individual members, and may resort to such sources of information as shall be most satisfactory to their minds, although it should not be communicated in the precise form prescribed in the schedules required to be laid before them. (Pacific Hotel Co. *v.* Pollak, 8 Legal News, p. 396.)

"In the equalization of the assessments between the several counties the *Board acts upon the general information of its members*
54 respecting the value of land and other property in different portions of the state. In respect to these matters, the law, while requiring certain information to be placed before the Board, does not require them to exclude from their consideration any information, however obtained, which may be satisfactory to their minds, and assist them in making a fair assessment and equalization." (Opinion of Attorney General, Proceedings of the Board, 1877, page 17.)

"To the State Board of Equalization.

GENTLEMEN: Your Committee on Assessment of Railroad Property beg leave to report that they have carefully examined the schedules and statements as furnished by the various railroad companies, and by the Auditor of Public Accounts, and have endeavored, as far as possible, to assess at a just and equitable value the property of railroads embraced in said schedules; and in order to *equalize* the same with the other assessed property of this state, have made the assessments at *fifty per cent.* of the cash value thereof.

"The committee find that a fair and equitable assessment of the 'tangible property' of the foregoing railroads leaves nothing to be assessed as 'capital stock.'

"The tabular statement hereto attached shows the results of our labors." (Report of the Committee on Assessment of Railroad Property, Proceedings of the Board, 1877, page 73.)

In 1879 the Board in assessing the capital stock of corporations deducted 50 per cent. of the actual value for the purposes of equalization with other property of the state. (Proceedings of the Board, page 75. See also page 10 for the resolution fixing the basis at fifty per cent.)

In 1880 a like resolution and basis of assessment of capital stock were adopted. (Proceedings of the Board, pages 6 and 7.)

55 In Huck *v.* Chicago & Alton R. R. Co., 86 Ill., 352, the deduction of tangible property was made from the valuation of capital stock as *equalized* on a 50 per cent. basis. This is stated on page 355 of the court report, and on page 356 is a table from the proceedings of the Board showing fully such basis of equalization. No question was made about the propriety of this action, which was taken by the Board in 1875.

In Ohio & Miss. R. R. Co. *v.* Weber, 96 Ill., 443, it is expressly stated on page 445 that the capital stock assessment made in that case was "*equalized* with the other state assessments by deducting *fifty per cent.*" The action of the Board was sustained in that case without any doubt being thrown upon the propriety of this *equalization.*

After 1883 the Board abandoned the practice of adopting resolutions as to the general rate throughout the state, and of showing the percentage deducted for equalization, and adopted the forms of tables substantially as now used,—except that resolutions were adopted in 1890 (page 5) that the local assessors had assessed on a twenty-five per cent. basis; in 1891 (page 9), on a basis not exceeding twenty-five per cent.; and in 1893 (page 8), on a basis not exceeding twenty-five per cent.

In the recent *mandamus* proceedings no question of equalization was before the court, perhaps primarily because the detailed report of the proceedings of the Board fails to show affirmatively that there was any process of *equalization* in the assessment of capital stock. For aught that appears on that subject in the Board's proceedings the Board might be supposed to have intended to assess

56 capital stock upon a full cash valuation, although it is plain that other property was not so assessed.

It is clear that equality of assessment for taxation is the fundamental and controlling principle of the constitution, notwithstanding any language contained in the statute, and this has been clearly and repeatedly recognized by the Supreme Court of this state.

Board of Supervisors of Bureau County *v.* C., B. & Q. R. R. Co., 44 Ill., 230.

C. & N. W. R'y Co. *v.* Board of Supervisors of Boone County, 44 Ill., 240.

People *v.* Solomon, 46 Ill., 340.

Darling *v.* Gunn, 50 Ill., 428.

C. & A. R. R. Co. *v.* Livingston Co., 68 Ill., 460.

Law *v.* The People, 87 Ill., 404.

City of Chicago *v.* Fishborn, 189 Ill., 367.

In the *Bureau County* case, on page 238, the court said:

"Can a railroad company, by any action of the corporate authorities of a county, be required to pay more than its fair share of taxes as compared with those paid by individuals? Does the power exist anywhere to destroy the cardinal principle of uniformity of taxation so forcibly and prominently insisted upon by the constitution? This is a great question, affecting not only railroad corporations but every property owner and taxpayer in the state.

"*It seems to us there is something so monstrous in the proposition as to be indefensible by fair argument.*

"Regarding *uniformity as to the vital principle, the dominant idea of the constitution,* where can the power reside to produce its opposite? Where is the power lodged, in view of this principle, to compel A to pay on his land or personal property, of no more value than the same kind of property belonging to B, forty per
57 cent. more taxes than are assessed against B? We affirm such a power nowhere exists, and if it did, *it would be so revolting in its exercise to the lowest sense of justice with which our species is imbued as to justify any and every lawful expedient for relief against it.*"

In Darling *v.* Gunn it was said, on page 428:

"In this case, the value fixed by the board of revision appears to have been uniform with the value of other personal property assessed on the same roll. This, then, rendered it constitutional and legal, and, if so, it must be equitable that property of appellant should be assessed no higher than that of his neighbors. Why should he be required to bear any greater burdens, in proportion to the value of what he has, than other persons? No reason is perceived for such a requirement. As we understand this record, the board of review fixed the assessment of these shares at the same proportion of their true or market value as other personal property was assessed. *If other personal property was assessed in that township at one-half or other fraction of its true value, then such shares should be assessed at the same rate of valuation.*"

The two foregoing cases arose under the constitution of 1848. But the *Livingston County* case arose under the constitution of 1870. In that case the court said, on page 460:

"So the evidence shows the valuation returned by the company to have been a fair and correct one, on the basis of one-third of the actual value. Yet the board doubled this valuation, so that the property of this company was assessed at two-thirds of the actual value, while that of natural persons in the county was assessed at only one-third of its actual value.

"This cannot be done under our constitution. Taxation must be uniform. There can be no discrimination against persons; they must be taxed alike. Bureau County *v.* Chicago, etc., R. R.
58 Co., 44 Ill., 229; Chicago & N. W. R. R. Co. *v.* Boone County, *id.*, 240; Darling *v.* Gunn, etc., 50 *id.*, 424. In the first cited case it was held that where the property belonging to individuals in a county has been assessed at less than its actual value, the constitutional rule of uniformity forbids that the property of a rail-

road company in such county should be assessed upon any greater per cent. of its value than that of individuals.

In the *Law* case the language of Mr. Justice Scott, speaking for all the members of the Supreme Court, was as follows (pp. 404-6):

"That which is said to render the action of the State Board illegal is, they first ascertained that all property in the state, both real and personal, had been assessed for the year the taxes were extended at 50 per cent. of its cash value, and then proceeded to assess for taxation property of railroad and other private corporations, at the same proportion of its cash value.

"Under our constitution, all needful revenue shall be levied by a tax on the valuation, so that every person or corporation shall pay a tax in proportion to his or its property. Whatever rules may be adopted to carry out this provision of the constitution should be with a view to produce that result. Accordingly, it is made the duty of assessors, and the State Board of Equalization, so far as it is charged with that duty, to assess all personal property at its 'fair cash value,' and all real estate at a 'price it would bring at a fair, voluntary sale.' However desirable it may be that all assessments should be made on that basis, it is known such a result has never yet been reached. When the State Board came together, their first duty was, to ascertain, as nearly as practicable, on what basis the valuations of both real and personal property had been made. That was indispensable to any just equalization of values. They found all valuations of real and personal property had, in fact, been made on a basis of fifty per cent. of its cash value, and expressed their finding in a resolution adopted. Had the board resolved all property in the state had been assessed at its fair cash value by the local officers, for
59 taxation, it would not have changed the actual fact with which the board had to deal. Common honesty required the board to declare the exact truth, as we have no doubt was done, from the best information obtainable. It was a fact within their jurisdiction to find, and if fairly done, and from the most reliable information in their possession, we are not aware such a finding can be reviewed by any court or by any tribunal.

"It will be conceded the statute makes it the duty of the State Board to assess corporate property at its fair cash value. Previous decisions of this court so declare the rule. Porter *v.* Rockford, Rock Island and St. Louis Railroad Co., 76 Ill., 561; Chicago, Burlington and Quincy Railroad Co. *v.* Cole, 75 Ill., 591. No omission of that duty is shown. As we understand the record, the State Board did estimate the fair cash value of all that class of property which the law made it their duty to do, and their action in that respect is not called into question. As we have seen, all other property in the state had been assessed at one-half its cash value. Under the law, the State Board had no power to increase the aggregate valuation beyond one per cent. on such aggregate assessed valuation. It became a question, what was to be done? Whatever may be the statutory injunction as to making valuations of property for taxation, the controlling authority as contained in the constitution is, it shall be so valued that ever- person and corporation shall pay a tax in proportion

to his or its property. Under the circumstances, had the State Board set down the property of corporations at its fair cash value, as ascertained for the purpose of taxation, then such property would have been subjected to an increased taxation in proportion to property of other owners, which the constitution positively inhibits. Observing the constitutional injunction, rather than a literal compliance with the statute, the State Board equalized the valuations of that class of property at the same ratio adopted by local officers in fixing valuations of other property in their several localities. Any other rule would have been most unjust as well as in contravention of the constitution. Under the rule adopted, every person
60 and corporation is made to pay a tax in proportion to the value of his or its property. It was the only rule that could have been adopted to secure anything like uniformity in valuations for taxation. A strict observance of the statute in that respect would have worked manifest injustice, as well as a plain violation of that constitutional requirement that the burden of taxation should be made to bear equally upon all property, whether owned by private persons or by corporations. That which the constitution imposed was the higher duty, and the State Board was not at liberty to disregard its provisions."

In the *Fishburn* case, decided in February, 1901, on page 377, it was said:

"*The central and dominant idea* of the constitution in the assessment of property for taxation and in the payment of taxes is *uniformity and equality.*"

The Supreme Court has in late years refused to *declare taxes invalid* in cases where objections were based solely on violation of the constitutional requirement of uniformity, but it has uniformly held, as in the *Law* case, that it was the *duty* of assessing officers and bodies to observe the requirement.

See

Keokuk & Hamilton Bridge Co. *v.* The People, 161 Ill., 132, 138.

Keokuk & Hamilton Bridge Co. *v.* The People, *id.*, 514, 519-20.

As the company understands the matter, the Board in 1900, after ascertaining the fair cash value of the capital stock, including the franchise of each corporation subject to a capital stock assessment, sought, and undertook, in fact to *equalize* such capital stock valuation with the equalized assessed valuation of other prop-
61 erty, and adopted its final capital stock assessment figures upon the basis of such an equalization. But unfortunately the printed proceedings of the Board do not fully show the process pursued, and the record presented to the court in the mandamus proceedings was thus misleading. The introductory statement and the headings of the columns of figures in the table showing the different capital stock assessments, on page 43 of the Proceedings of the Board for 1900, are as following:

Schedule "A."—Showing the assessment made by the State Board of Equalization upon the Capital Stock of Companies and Associations incorporated under the laws of the State, other than Railway Companies, for the year 1900, being the Equalized Value of Capital Stock over the Equalized Value of Tangible Property of such Corporations assessed by local assessors, accompanying and made part of the Report of the Committee on Assessment of Capital Stock of Corporations.

Name of company.	County.	Location.	Amount of capital stock paid up, as reported by company.	Full value of capital stock and franchise, as fixed by State board of equalization.	Assessed value of capital stock and franchise, as fixed by the State board of equalization.	Equalized value of tangible property, assessed by local assessors, deducted under requirements of section 3, Revenue Law.	Net assessment of capital stock and franchise, being excess of same over equalized value of tangible property assessed by local assessors.

Although the above introductory statement mentions the *"equalized* value of capital stock," the headings do not disclose any distinct process of equalization such as were formerly shown in the earlier reports of the Board, and such as appears, as already stated, on page 356 of the report of the case of Huck *v.* Chicago & Alton R. R. Co., 86 Ill. Rep., as follows:

62 TABLE "A."—Showing the Assessment Made by the State Board of Equalization on the Capital Stock of Railroads, Accompanying and Made Part of the Report of the Committee on Assessment of Capital Stock of Corporations.

Name of company.	Capital stock paid up.		Total indebtedness except for current expenses.		Market or actual value of paid-up capital stock and debt as determined by the State Board.	Capital stock and debt as equalized, with the aggregate assessment of the State by deducting 50 per cent. of market or actual value.	Total equalized value of tangible property assessed by State board and in counties.	Assessed and equalized value of capital stock, being excess of equalized value of capital stock and debt over equalized value of tangible property.
	Total.	Proportion in Illinois.	Total.	Proportion in Illinois.				

63 Equalization of capital stock assessments, by reducing them so as to make them conform to the equalized assessments of other property throughout the state, has come under the consideration of the Supreme Court in at least five cases; namely:

Porter *v.* Rockford, R. I. & St. L. R. R. Co., 76 Ill., 561; see page 593.

Huck *v.* Chicago & Alton R. R. Co., 86 Ill., 352; see pp. 355, 356.

Law *v.* The People, 86 Ill., 385; see pp. 404, *et seq.*

C., B. & Q. R. R. Co. *v.* Seiders, 88 Ill., 320; see pp. 323-325.

Ohio & Mississippi R. R. Co. *v.* Weber, 96 Ill., 443; see page 445.

The Porter case dealt with the assessment of 1873, which was equalized on a basis of 70 per cent. of a full valuation. The other four cases all dealt with the assessment of 1875, which was equalized on a 50 per cent. basis. The Law case expressly approved the equalization, and the others impliedly did so. In those years the methods and bases of equalization were clearly set forth in the Board's proceedings, as shown by the form of schedule in the Huck case, page 356.

It is not surprising, in view of the form adopted by the Board in making up its report, that the Circuit and Supreme Courts, in the mandamus proceedings, ignored altogether the element of *equalization,* and thought that the Board had similarly ignored the element of *indebtedness.* The actual result worked out by the Board, in its application to this company, is shown by the following figures:

64

Capital stock, par value	$5,971,100
Indebtedness	4,808,000
Full valuation, on the basis of par value of shares of stock	$10,779,100
Valuation, as equalized by the Board, for capital stock assessment	$4,770,095

being an equalized valuation of something over 43 per cent.

This company does not believe that the other property in the state, real *and personal,* as a whole, or on the average, was assessed for 1900 upon any higher basis than one-fifth of 43 per cent. of its full cash value, and if the equalization work of the Board in 1900, and the reasons for it, had been fully shown, and been considered, in the *mandamus* proceedings, it is fair to conclude that the courts would have taken quite a different view of the action of the Board. In Ottawa Glass Co. *v.* McCaleb, etc., 81 Ill., 556, the Supreme Court said, on page 556:

"If it be urged that the constitution requires that all property shall be taxed, according to its value, so that it may only be required to bear its proportion of the necessary burden of taxation, and this property is overvalued, and, therefore, must pay more

than its share, then we can only say that the courts are utterly powerless to review and fix its proportionate value. The valuation of property is conferred upon and is solely intrusted by the organic law to another and different class of individuals and officers than those connected with the judicial department of the government. See The Republic Insurance Co. *v.* Pollak, 75 Ill., 292. The constitution has declared that the persons required to make the valuation shall be elected or appointed for the purpose, and it neither gives nor contemplates an appeal from their action, to the judicial or to the executive department of the government."

65 The company contended before the Board in November, 1900—as it contends now—against being compelled to bear *more than its just and fair proportion* of public taxation. Its counsel said to the Board at that time:

"It is my deliberate conviction, which I am prepared to stand by until I have received some greater light than I have at present, as the result of my observation and experience, that corporations in the City of Chicago are taxed higher in proportion than individuals. I believe this is the experience of you gentlemen, and I know it is the view of taxing officers in the City of Chicago, because they have told me so. I believe you will say it is so in your own communities. I should of course make one qualification, and that is that we are talking largely about personal property assessments. There isn't any great difficulty about reaching the proper assessment of real estate in different localities. There is a difficulty in different localities about equalizing, as you gentlemen are well aware. * * * But it is in the personal property assessment that the trouble lies. Bear in mind that the corporations are taxed just as other people are on their real estate. What real property they hold has been assessed by local assessors and passed on by the Board of Review, just as the real estate of other people has."

The Supreme Court has many times held that the assessment of capital stock is a personal property assessment, and that the tax upon it is a personal property tax:

Distilling Co. *v.* The People, 161 Ill., 101, 104.
Parsons *v.* Gaslight & Coke Co., 108 Ill., 380, 383.
Copper *v.* Corbin, 105 Ill., 224, 230.
Belleville Nail Co. *v.* The People, 98 Ill., 399, 405.

66 It appears from the report of the Board for 1900, pages 128-30 and 175-77, that the local assessments of 1900 in Cook County, in numerous outside counties, and in the state as a whole, were as follows:

County.	Real estate.	Personal property.	Total.
Cook	$205,872,414	$54,692,108	$260,564,522
Adams	8,178,399	2,687,013	10,865,412
Alexander	1,337,080	403,392	1,740,472
Champaign	10,853,485	2,406,252	13,259,737
Christian	5.543,156	1,346,604	6,889,760
Henry	6,561,241	2,130,338	8,691,579
LaSalle	12,998,506	3,310,042	16,308,548
McLean	14,231,843	3,468,886	17,700,729
Peoria	12.866,758	3,272,285	16,139,043
Sangamon	11,833,383	3,056,285	14,889,668
Stephenson	5,354,021	1,559,922	6,913,943
Vermillion	9,391.392	2,145,525	11,536,917
Wayne	1,457,566	381,479	1,839,045
Winnebago	7,988,508	2,542,869	10,531,377
Entire state	612,970,212	166,542,866	779,513,078

67 These figures give the following comparative percentages:

	Percentage of personal property to real estate.	Percentage of personal property to total prop.
Cook	.265	.209
Adams	.328	.247
Alexander	.301	.231
Champaign	.221	.181
Christian	.242	.195
Henry	.324	.245
LaSalle	.254	.202
McLean	.243	.195
Peoria	.254	.202
Sangamon	.258	.205
Stephenson	.291	.225
Vermillion	.228	.185
Wayne	.261	.207
Winnebago	.318	.241
Entire state	.271	.213

In the state at large and in all these counties, the taxable personal property is, no doubt, equal in amount to the taxable real estate. See "Taxation in American States and Cities," by Prof. Richard T. Ely, pages 143, 168. If this be so, it follows that in Cook County, for example, the aggregate personal property was valued in 1900 on not more than a 25 per cent. basis, as compared with its true value. In this connection it is worth noting how in former years nearly the same condition of things obtained, for in 1873, according to the report of the city comptroller for 1900 (*pages* 334-7), the assessment of real estate in Chicago was $262,900,000, and of personal property, $49,100,000.

68 It may possibly be said that low personal property valuations arise mainly from the fact that much personal property escapes taxation, rather than from the making of as-

sessments upon a low standard of valuation. This is believed to be not altogether true, but in any event, the obvious reply is that having in view *just* and *proportionate* taxation it cannot matter *how* it arises. It exists, and the result as to the personal property assessment of *any one county* in the aggregate, viewed from the Board's standpoint, would be precisely the same, mathematically and practically, whether one-half of the entire personalty of the county be given a valuation equal to its actual cash value, or the entire personalty be given a valuation equal to only one-half of its actual cash value. It becomes for the personal property in the county, in its entirety, a fifty per cent. basis, in either case. And it makes no difference whether we compare assessed valuations or so-called full valuations, if in each case we make a comparison between valuations of like kind. When, therefore, the local personal property assessments for the year 1900 in the various counties came before the Board, what could the Board do respecting them in the absence of any showing or knowledge of actual omissions of specific property? The Board must at once have seen that personal property in the above mentioned counties, and in the state generally, was apparently assessed according to standards varying from about 22 per cent. to about 32 per cent. of actual value. If the Board had made and declared a finding to that effect by a *resolution* spread upon its records, would the situation thereby have
69 been made any more obvious, and would it in that event have fallen any more clearly within the principles adopted by the Supreme Court and enunciated by Mr. Justice Scott, in the *Law* case? With regard to these local assessments, the function of the Board is purely an *equalizing* function. Where all the counties appear to have been assessed by too low a standard, but nevertheless by a uniform standard, the Board has no occasion and no power to take any action, for the constitutional and statutory rule of proportionate valuations has been complied with and the Board cannot add materially to the aggregate assessment in the state. (See General Revenue Act of 1872, sections 105-106-107, and the act of February 25, 1898, sections 50-51 and 55.)

The Chicago corporations indirectly affected by the *mandamus* proceedings were not the only ones whose capital stock was assessed by the Board in 1900, as will be seen by looking at pages 43 to 50 of the Proceedings of the Board for that year. The item of *debt* is not *reported* in respect of any of the corporations, but it is probably not true that the Board really excluded it from actual consideration, for the Board certainly had information on the subject. This company has ascertained the indebtedness of a number of the corporations thus assessed throughout the state, and with this item thus supplied the capital stock valuations of these corporations are stated here for purposes of illustration and comparison. The figures are as follows:

70	Paid up shares.	Indebtedness.	Capital stock valuations.
Chicago Edison Company	$5,971,100	$4,808,000	$4,770,095
Quincy Gas and Electric Company	600,000	600,000	300,000
Quincy Horse Railway and Carrying Company	600,000	500,000	300,000
Egypt Electric Company	40,000	11,222	20,245
Urbana and Champaign Railway, Gas and Electric Company	465,000	290,000	250,000
Kewanee Light and Power Company	100,000	80,000	56,575
Marseilles Land and Water Power Company	500,000	75,000	80,300
Ottawa Railway, Light and Power Company	150,000	150,000	19,160
Bloomington Electric Light Company	100,000	10,000	39,555
Jacksonville Gas Light and Coke Company	127,000	24,156	101,535
Peoria Gas and Electric Company	500,000	None	212,110
People's Power Company (Rock Island)	300,000	150,000	115,000
Springfield Consolidated Railway	750,000	468,000	300,000
Danville Street Railway and Light Company	700,000	522,000	425,000

A merely superficial examination of local assessments and of the equalizing proceedings of the Board demonstrates that for the year 1900 property generally throughout the state was not assessed at one-fifth of any where near its full cash value. The Board
71 has never possessed the power to raise assessments in counties assessing too low, in order to bring them up to an equality with such other counties, if any, as might have complied literally with the statute and valued property for assessment upon the basis of its full cash value. Under the law equalization has necessarily consisted substantially in taking off in certain localities whatever has been added in others, thereby avoiding an unlawful raising of the aggregate assessment for the state. Accordingly it must always be the case that when local assessments have been equalized at all they have all come to rest upon a basis lower than an actual cash valuation. Any other result is a mathematical impossibility. There has never been an equalized assessment upon a basis of actual valuation.

In the assessment for the year 1899 there was a deduction of 5 per cent. from the assessed value of the taxable property in Cook County as returned by the local assessing bodies. In the year 1900 the Proceedings of the Board set forth that "the returns from Cook County show a decrease in the assessment of 1900, as compared with the assessment of 1899, of $188,263,769, or 31.2 per cent." In the final action of the Board in 1900, in order to equalize this Cook County assessment with the assessed value of all the property in the State, only 10 per cent. was added. The *equalized* value of property in Cook County assessed by local assessment for the year 1899 was $364,147,735. (Proceedings of the Board, Appendix, p. 76.) For the year 1900 the *equalized* value of property assessed by local assessment in Cook County was $286,620,975 (Proceedings of the Board, p. 175), a decree in the *equalized* assessed value of
72 the locally assessed taxable property in Cook County, for the two years, of $77,527,000, or more than 21 per cent. It is entirely plain that property in Cook County was not assessed as much as one-fifth of its actual value when originally returned by the local

assessing bodies to the State Board in the year 1899, but nevertheless 5 per cent. was deducted by the State Board *in equalizing.* From this reduced amount for 1899 more than 21 per cent. reduction was made for the equalized assessment for the year 1900, so that the equalized assessed value of the property of Cook County subject to local assessment in 1900 was more than 26 per cent. less than the original assessment thereof made in 1899 by the local assessing bodies. In the meantime there had been no depreciation in the actual cash value of the taxable property of Cook County. On the contrary, the year 1899-1900 is well known as one of distinct prosperity and of growth in values, so that the equalized assessment of the taxable property in Cook County for the year 1900 must, on the foregoing superficial showing, have been based upon a valuation probably *at least* 30 or 40 per cent. less than the actual value of the property in that year.

In reality the basis was no doubt much lower, as will be shown further on. But one thing is obvious. No one will seriously contend that the local assessing offices in Cook County in 1899 valued property at *more than they thought* its fair cash value; and accordingly it is demonstrated from the proceedings of the Board that the equalized valuation of the local Cook County assessment in 1900 was 26 per cent. below the standard which the assessing offices considered as *not above* the fair cash value in 1899.

73 In some counties for the year 1900 assessments may possibly have been made on a basis more nearly approaching one-fifth of a full cash value, but this is a doubtful supposition, and the proceedings of the Board show the following percentages of reductions in the assessments of *lands,* viz.: In Iroquois, 35 per cent.; in Massac, 36 per cent.; in Champaign, 30 per cent.; in six counties, 25 per cent.; in one county, 24 per cent.; in twelve counties, 20 per cent., and in eleven counties from 18 to 19 per cent.

A deduction of from 15 to 30 per cent. was made by the Board in the year 1900 from the local assessments of *lots* in all but eight counties in the state, and a deduction of 15 per cent. or more was made from the local assessments of *personal property* in all but nine counties of the State.

The valuation of lands and lots throughout the State in 1900, as assessed by the local assessing officers and equalized, and shown in the printed proceedings of the Board, are ridiculously small, and they furnish abundant evidence of assessments in the counties outside of Cook at far below one-fifth of a fair cash value. (See proceedings of the Board for 1900, pages 20, 21, 23-26.)

It is clear that it would be a violation of the principle of equality in taxation if the capital stock of a few corporations were to be assessed for 1900 by the State Board upon the basis of one-fifth of its full value, when all other property in the State, including property of other like corporations, was assessed for that year upon a basis of from 30 to 50 per cent. less. There is nothing in the order or judgment of the Circuit Court or in the opinion of the

74 Supreme Court which requires the capital stock of the corporations affected by the mandamus proceedings to be as-

sessed upon any other basis than that uniformly applied in the year 1900 to other property, and to other like corporations, in the State, and the decisions of the Supreme Court are clear and emphatic that the Constitution, which is the Supreme law, requires all property in the State, including that of corporations, to be assessed and taxed upon the same basis or percentage of its value.

If by any possibility the Board shall adopt a different construction of the judgment in the mandamus suit, and of the writ issued in pursuance thereof, and shall construe them as requiring the Board to take, as the basis of a capital stock assessment for 1900 against each one of the corporations concerned, one-fifth of a valuation of the total shares of stock of the corporations based wholly upon the market quotations or prices of such shares as were sold in stock markets on or near April 1 of that year, with one-fifth of the debt added, (less one-fifth of the local assessment of tangible property), and shall refuse to take into consideration any other facts in making its assessment, whereby in the judgment of the Board the assessment when made against the capital stock of these particular corporations will be made upon a different basis of value than that upon which other property throughout the State was assessed for the year 1900, the Board ought, in that event to set forth clearly in its proceedings and records that the assessment is made under and in pursuance of the judgment and mandate of the court, and not in the exercise of the judgment and discretion of the Board; and the Board ought further, in such event, to state distinctly that
75 in its opinion the assessment so made under the direction of the court is not upon the same basis as the assessment of other property for the year 1900, so that the corporations affected may be able to be heard upon the question whether the order of court does fix a definite basis upon which the assessment must be made, ignoring all other considerations, or whether it only purports to require the Board to do its duty in regard to assessing these corporations for that year, the same as in making assessments for any other year or against any other corporations. One of two courses should be followed: either the Board should exercise its own honest, independent judgment concerning the *amount* of the assessment commanded for 1900 upon the few corporations concerned, or if it thinks itself constrained by the judgment and the writ of the court it should honestly and frankly say so in connection with its action.

Assessing the capital stock of corporations is productive of inherent injustice as compared with the assessment of individuals. Fundamentally a capital stock tax is a tax upon business *good-will*, which is never taxed against an individual or a partnership. This injustice in Illinois is made all the more pronounced by the exemption of certain classes of corporations from capital stock taxation. Corporations for purely manufacturing purposes are exempt, but trading corporations are not. And large corporations whose shares of stock are purchased and sold upon stock exchanges are at a disadvantage as compared with less conspicuous ones which have no occasion to make public reports of their condition and which largely

can, and do, conceal the value of their good will. So far as
76 such injustice is created by law the Board is not concerned with it, but in performing its duties under the law the Board should take special care to avoid causing this injustice to be increased and exaggerated through over-valuations of capital stock as compared with other property.

This company has gathered some specially interesting facts respecting property valuations in Cook County. Equally interesting facts from other counties in the state will no doubt be brought to the attention of — Board from other sources.

The population of Chicago, in round numbers, is a million and three-quarters. The Chicago directory for 1900 contained over 580,000 names. The tax records for 1900 show that the personal property taxpayers in the City, including individuals, firms, corporations and estates, were approximately 36,000, of which 25,200 are individuals and 6,200 are firms.

A careful examination was recently made at the instance of this company to ascertain the *amounts of taxable personal property left by individual decedents, as compared with the assessments of their personal estate for taxation,* and *with the personal property assessments of the individuals themselves in their lifetimes.* All estates of persons dying since April 1, 1899, were examined. Where an estate did not show more than $375 of taxable personal property it was ignored, for a fundamental practice in Chicago is not to impose any personal property taxes upon individuals having less than $375 of personal property. Care was taken to exclude all property not plainly taxable. From this examination it appeared that the
77 actual assessments of the personal property against the estates averaged not quite 11 per cent. of the full valuation, or in other words, that their full valuation by the assessors averaged only 52 per cent. of their full valuation as shown in the Probate Court files; and that the assessments made against the individuals in their lifetimes averaged only about 3 per cent. and showed a full valuation of 15 per cent. as compared with the taxable personal property in their estates.

These percentages are probably rather high, because in getting at the valuations of personal property in the estates all doubts were resolved in favor of excluding property from the taxable class rather than including it, and the valuations were the uniformly low figures ordinarily shown by inventories and inheritance tax appraisements.

The full significance of these figures is hardly apparent at first glance. They mean that taking all the citizens of Chicago who have died in the last year and a half,—seemingly a sufficiently large and average proportion to show an average result—it appears distinctly from their last assessments that they were paying personal property taxes on only 15 per cent. of their taxable personal property, and that the assessing officers have assessed such personal property at substantially one-fifth of one-half its full value, instead of one-fifth of its full value. In respect to the individual tax payers it will naturally be said that much of their personal property could not be discovered, and that they were untaxed with respect to it in their life-

times for that reason, but this is not true in respect to their estates, which appear of record in the Probate Court. As to the as-
78 sessments of the personal property in the estates, it is not a case of omission at all, but a case of undervaluation to the extent of 50 per cent. Is it surprising that corporations such as this company claim to be over-taxed upon their personal property in comparison with individuals?

An examination of individual assessments has also been made, with interesting results. Nearly all of the people who have been before the board complaining about the supposedly low assessments upon the capital stock of corporations, and urging an increased capital stock assessment, filed no schedules of their personal property with the local assessors, and many of them, including the loudest complainants and numerous public officials, are wholly untaxed upon any personal property.

While undervaluation in Cook County is particularly glaring in respect to personal property assessments, it exists likewise in respect to real estate. Right here it should be said that the basis of assessment in Cook County is probably quite as high as in the rest of the state. Many excellent authorities declare that the basis is higher in Cook County than in most other counties. However that may be, it is certainly true that outside of the central business district of Chicago, or the district within the elevated railroad "loop," and excepting also certain sections occupied by the finer class of residences, as, for instance, in a portion of the North Division, real estate in Cook County is not assessed at anything like its full value, and never has been. In the "loop" district and in the North Side section referred to, real estate assessments were raised generally some years ago, and though there have since been many reductions in in-
79 dividual cases, much real estate in these two districts is still assessed at more than one-fifth if its value. But this is not the general rule throughout the county or the city.

It is, of course, not possible to state with accuracy the value of the real estate in Cook County, but it is practicable to obtain some approximate idea of its value, including the improvements, as well as of the value of tangible personal property. All fire insurance companies organized outside of the state and doing business in Chicago are required by law to pay 2 per cent. of their gross annual premiums to the city. The amount paid for the year ending July 1, 1900, was $149,127, and for the year ending July 1, 1901, $149,960. This represents premiums of about $7,500,000 each year. Experienced and reliable insurance men have estimated that additional premiums to the amount of at least $1,000,000 are paid for insurance in Chicago to companies from which no returns are made to the city. This would make the total premiums $8,500,000. The same authorities say that the average insurance rate is from 7/10 of 1 per cent., to 1 per cent. At the latter rate, which is more conservative for the present calculation, the total insurance placed upon insurable property in Chicago for each of the two years mentioned would be approximately $850,000,000. These same insurance men estimate that the average amount of insurance carried is somew-ere from two-

thirds to three-fourths of the full value of the property covered—certainly not over three-fourths. This insured property does not include land, nor can it be supposed to include, to any appreciable extent, moneys, rents or credits, for it is not the practice in Chicago to insure these last three items. It does include such things
80 as stocks of merchandise and household furniture. This calculation would give as a fair estimate of the value of insured tangible property in Chicago about $1,200,000,000. If 5 per cent. be added to this to cover the country outside of Chicago,—certainly a moderate addition,—the total insured property of Cook County is thus fairly estimated on a conservative basis to have a value of $1,260,000,000.

Now, as to the value of land. About five years ago, when real estate values were lower than at the present time, Mayor Swift of Chicago, at the request of a number of prominent citizens who raised the necessary funds for the purpose, appointed a committee or commission, commonly called the Swift Commission, of five well known business men, three of them well acquainted with real estate values, two of them experienced builders, and all of them men of high standing, to make a careful investigation of real estate values in the south division of the City of Chicago north of 12th street. They performed this work in a public spirited manner, and the results of it have furnished much useful information. It is generally considered that their valuations were somewhat high for that time, because actual sales of land within the same district have not since that time averaged up to their figures. Such actual sales, at least until very recently, have been thought to average about 20 per cent. less than the Commission's valuations. Their valuation of the land within the district mentioned was, in round figures, $337,000,000, and of the improvements $101,000,000, making a total of $438,000,000.

(Economist Valuation Supplement, March 17, 1900, p. 33.)

81 It will be seen that of the total valuation approximately 67 per cent. is given to land and 23 per cent. to improvements. Deducting 20 per cent. from the total, as an allowance for the over valuation by the Commission, shows $351,000,000 as a fair valuation of all this property, both lands and buildings, for the year 1896. In 1899 that was substantially the full valuation adopted in the local assessment. A division of the amount between land and buildings on the basis of the Commission's percentages gives approximately $270,000,000 as the full fair cash value of the land alone. The report of the State Board for 1899 gives the total value of lands and lots (with improvements), locally assessed in Cook County, at $1,514,000,000, as returned by the local assessing officers. Deducting the full assessment valuation of the property in the south side district north of 12th street from this total, leaves a balance of $1,163,000,000 as the full assessment valuation of the land and lots (with improvements) in the remaining portion of Cook County. It is certainly not unfair to say that the relative value of land in the aggregate as compared with buildings should be no greater in the south side district north of 12th street than in the remaining portion of Cook County, which includes much valuable land, wholly unim-

proved. Taking the same basis of 67 per cent. obtainable from the Commission's figures gives $900,000,000 as the value of the land alone, outside of this district. Adding to this the $270,000,000 of land value within the district makes a total land value for Cook County, exclusive of buildings, and exclusive of real estate belonging to railroad rights of way and not assessed locally, of $1,170,000,000.

82 This is an estimate for 1899, based partially upon a valuation made in 1896, when the average price of real estate was certainly lower. Values in 1900 were in general the same as in 1899, while they are probably somewhat higher on the average in Cook County in 1901 than in 1900.

This land valuation added to the total insured property gives $2,430,000,000, as the fair aggregate value of lands, buildings, stocks or merchandise, furniture and similar tangible property in the county. This is a rough estimate, but the method adopted should not produce an erroneously large result.

There is one other item which may fairly be calculated and added, viz.: moneys of resident depositors in Chicago banks. The investor's Manual of May 5, 1900, states the total deposits in the Chicago banks in February, 1900, as more than $342,000,000. Exactly how much of these deposits belong to non-residents cannot well be ascertained, but if it be assumed that one-half of the total belongs to persons and corporations elsewhere, there would still have been over $170,000,000 of Chicago bank deposits owned in Cook County. That amount is probably a moderate estimate in view of the fact that the individual deposits in the banks were $177,000,000, and the savings deposits were $47,000,000. The Investors' Manual of May, 1901, gives the total deposits in Chicago banks in February, 1901, as over $415,000,000, the individual deposits as over $200,000,000, and the savings deposits as over $59,900,000. Adding this additional item of $170,000,000 to the property valuations previously ascertained shows a grand total of $2,600,000,000 for 1900. Few persons will

83 believe this is too high an estimate for the classes of property included. Most people well informed will consider it too low. It is certainly too low a figure for 1901. But it is nearly twice the full valuation reported by the local assessing officers in 1900, which was $1,302,000,000, or five times an assessed valuation of $260,000,000. This shows a valuation down to a 50 per cent. basis without considering such items of property as notes, bonds and other taxable securities, the inclusion of which in the total property held in the county would reduce the ratio of the assessment to a still lower basis.

There is another method available for a rough calculation. As already stated the full value of real estate—lands, lots and buildings—was returned in 1899 by the local assessing bodies as $1,514,000,000. No one has ever pretended that this is an absolute over valuation of the county as a whole. Estimating the value of all taxable personal property at an equal amount would make the total value of both classes $3,014,000,000. That this is not an unfair estimate for personal property is indicated by the views of most students of finance and taxation, who generally take the view that

the personal property in all large commercial and manufacturing sections is at least equal in amount to the real estate. Prof. Richard T. Ely in his book on "Taxation in American States and Cities" says on this subject:

"Personal property has increased relatively more rapidly than real property, until now it is regarded as its equal in value in most of our American commonwealths. This would seem, however, to be a low estimate, if we may regard the estimate of an English writer on finance (Dudley Baxter), in regard to England, as at all trustworthy; for as early as 1869 he estimated the value of personal property in England at *double* that of real property." (P. 143.)

84 The reported local assessment for Cook County for 1901 (The Economist, September 28, 1901, page 358) is as follows: Real estate, $279,747,312; personal property, $83,323,622; total, $363,070,934.

In submitting this statement the company does not intend to waive any right it may have to object to an assessment of its capital stock and franchise, nor its right to contest the validity of such an assessment if made, or the validity of any tax which may result from such an assessment, but it wishes to comply fully and fairly with the request of the State Board of Equalization for information.

I, W. M. Anthony, comptroller of Chicago Edison Company, do solemnly swear that the statements of fact above set forth are true according to the best of my knowledge, information and belief.

W. M. ANTHONY.

Subscribed and sworn to before me this 18th day of November, 1901.

[NOTARIAL SEAL.] WILLIAM A. FOX,
Notary Public.

ISHAM, LINCOLN & BEALE,
184 *La Salle street, Chicago, Illinois,*
Counsel for Chicago Edison Company.

85 EXHIBIT B.

Supplemental statement to State Board of Equalization by Chicago Edison Company in respect to its capital stock, April 1, 1900, and April 1, 1901.

To the State Board of Equalization, Springfield, Illinois.

GENTLEMEN: In the sworn printed statement submitted to you by this company in November last the company omitted to call your attention to the fact that a portion of its capital stock is not subject to taxation by authority of the State of Illinois, but is exempt from such taxation because invested in rights or licenses under United States patents. See

Hollida & Ball *v.* Hunt, 70 Ill., 109.

Commonwealth *v.* Westinghouse Electric & Manufacturing Co., 151 Pa. St., 265; 24 Atl. Rep., 1107.

Commonwealth *v.* Edison Electric Light Co., 157 Pa. St., 529; 27 Atl. Rep., 379.

It is, therefore, proper that you should now be given particular information upon this point.

This company is engaged in the business of generating and furnishing electricity for lighting, heating and power purposes, under the system or patents commonly spoken of and known as the Edison system or the Edison patents. It has acquired its right to use such system and such patents under licenses from the Edison Electric Light Company, a corporation of the State of New York,
86 which for convenience will be hereinafter referred to as the New York Company, and which owns the patents. The royalties or payments payable by this company to the New York company are provided for in numerous agreements, the terms of which have been changed from time to time. For such licenses under these different agreements this company had down to the first day of April, 1900, issued and delivered to the New York Company

4,525 shares of this company's capital stock to the amount, in par value of	$452,500.00
And mortgage bonds of this company to the amount, in par value, of	72,000.00
And had paid to the New York Company cash to the amount of	33,327.39
Making a total, taking shares of stock and bonds at par, April 1, 1900, of	$557,827.39
Subsequent to April 1, 1900, and prior to April 1, 1901, it made a further cash payment to the New York company for such licenses, under these agreements, of	54,075.00
Making a total, April 1, 1901, taking stock and bonds at par, of	$611,902.39

All of these deliveries of stock and bonds and of these cash payments were made to the New York company wholly and exclusively for licenses under patents, and not for any patented articles or other tangible property whatever. In consideration for such deliveries of stock and bonds and such cash payments this company has not received from the New York company any tangible prop-
86½ erty, but has received merely intangible rights or licenses under letters patent. This company does not lease from the New York company any tangible property, nor does it have in its possession any tangible property belonging to the New York company. Accordingly this company is legally entitled to have exempted from capital stock taxation in Illinois for the year 1900 and for the year 1901 the respective portions of this company's capital stock invested, as above shown, in licenses under patents.

In computing the amounts for exemption, the shares of stock delivered to the New York company (4,525 in number) ought to be taken at the same price per share at which the company's shares of stock as a whole are valued by you for purposes of assessment; that is to say, for the year 1900 they should be taken at $125 per share,

that being the value which, as we understand, you have already placed upon the shares of stock of this company for that year. Upon that basis the exemption of the capital stock of this company for the year 1900 should be:

Value of 4,525 shares of stock, at $125	$565,625.00
Bonds, at par	72,000.00
Cash	33,327.39
Total, for April 1, 1900	$670,952.39

Assuming the same basis of stock valuation for 1901, the amount of exemption for 1901 would be larger by $54,075; that is to say, $725,027.39.

This company regrets the embarrassment which may be caused you in not submitting these figures at an earlier date, but, as no extension of the capital stock assessment for the year 1900
86¾ has yet been made by the County Clerk, and the assessment for that year is yet within your control, this company begs to request that you will recall your certificate from the Auditor, or will correct it by a supplemental certificate, and will correct the assessment made for 1900 by deducting the exemption herein set forth, and also requests that you will take due account of the exemption in making your capital stock assessment for 1901.

Any further information which may be desired upon this subject will be cheerfully furnished.

Very respectfully yours,

CHICAGO EDISON COMPANY,
By SAMUEL INSULL, *President.*

STATE OF ILLINOIS, *County of Cook, ss:*

I, Samuel Insull, President of the Chicago Edison Company, do solemnly swear that the above statement is true, ac-ording to the best of my knowledge, information and belief.

SAMUEL INSULL.

Subscribed and sworn to before me this 9th day of December, A. D. 1901.

WILLIAM A. FOX,
[NOTARIAL SEAL.] *Notary Public.*

ISHAM, LINCOLN & BEALE,
184 *La Salle Street, Chicago, Illinois,*
Counsel for Chicago Edison Company.

(Endorsed:) Filed Feb. 13, 1902. S. W. Burnham, Clerk.

87 And on to-wit: the twenty-eighth day of June, 1902, came the defendants in said entitled cause by their solicitors Mr. Edwin W. Sims, *et al.* and filed in the clerk's office of said Court

their joint and several Answers in words and figures following to-wit:

88 In the Circuit Court of the United States, Northern District of Illinois, Eastern Division.

CHICAGO EDISON COMPANY
vs.
MAURICE FITZGERALD, Town Collector, ET AL.

Answer.

Edwin W. Sims, Frank L. Shepard, William F. Struckmann, Solicitors for Defendants.

Original Filed June 28, 1902.

88½ In the United States Circuit Court, Northern District of Illinois.

No. —.

CHICAGO EDISON COMPANY, Complainant,
vs.
SAMUEL B. RAYMOND, County Treasurer and *ex-Officio* County Collector of Cook County, and MAURICE FITZGERALD, Collector of the Town of South Chicago, Defendants.

The joint and several answer of Samuel B. Raymond, County Treasurer and *ex-officio* County Collector of Cook County, and Maurice Fitzgerald, Collector of the Town of South Chicago, defendants in the above entitled cause, by Edwin W. Sims, County Attorney, Frank L. Shepard, Assistant County Attorney, and William F. Struckmann, Assistant County Attorney, their solicitors, to the bill of complaint of the Chicago Edison Company, complainant.

These defendants, now and at all times hereafter, saving and reserving unto themselves all benefit and advantage of exception, which can or may be had or taken to the many errors, uncertainties and other imperfections in the said bill contained, for answer thereunto, or to so much and such parts thereof, as these defendants are advised it is or are material or necessary for them to make answer unto, answering say:

89 1. These defendants admit that complainant is a corporation organized under the laws of the State of Illinois and a citizen of the State of Illinois, and has been and is engaged in business in the City of Chicago, as in paragraph 1 of complainant's bill alleged.

2. These defendants admit that the defendant Maurice Fitzgerald is the Collector of Town of South Chicago, and that the defend-

ant Samuel B. Raymond is the County Treasurer and *ex-officio* County Collector of Cook County; and that the duties of said defendant Fitzgerald and the defendant Raymond are as set forth in paragraph 2nd of complainant's bill of complaint.

3. These defendants deny that the complainant or anyone for it appeared before the Board of Assessors of Cook County on or about the 26th day of June, 1900, or any other day, and gave to said assessors full information concerning the property of complainant subject to taxation for the year 1900. These defendants admit that neither complainant or anyone for it filed with the Board of Assessors schedules of its property subject to assessment for purposes of taxation for the year 1900 at the time or in the manner or form required by law; but these defendants have no knowledge or information, save as in said bill of complaint alleged, why complainant did not file such schedule, and neither admit nor deny the allegations concerning such reasons, but deny the materiality thereof. These defendants further deny that complainant filed with the Board of Assessors any statement of its property or the
90 value thereof. These defendants admit that the Board of Assessors of Cook County did make an assessment of complainant's property subject to assessment by said Board of Assessors, and returned such assessment to the Board of Review of Cook County, as required by law; but these defendants admit that thereafter, in response to notice complainant by its counsel appeared before said Board of Review and was given a hearing by said Board of Review, and admit that no change was made in the assessment returned as aforesaid, except a horizontal reduction of 20 per cent. in the assessment of all personal property in said County, and that the full value of complainant's property subject to assessment in said County by the local Board of Assessors on the 1st day of April, 1900, was finally fixed by the Board of Review at the sum of $2,970,970, and at an assessed value of one-fifth thereof, and that the same was returned to the proper officers, as required by law.

4. These defendants admit that the State Board of Equalization convened in regular session for the year 1900 on or about the 11th day of September, 1900, and that said State Board equalized the assessed value of personal property in the State as between the different counties, and added to the valuation as returned by the local assessors for Cook County 10 per cent. thereof making a final full value of complainant's property subject to assessment by the local assessors of $3,268,070 and an assessed value of $653,614. These defendants admit that complainant appeared before said State Board of Equalization by its counsel, and admit that complainant gave to said Board of Equalization such information as
91 they deemed advisable; but these defendants say that they have no knowledge or information, save as by said bill of complaint contained, as to what information was furnished the State Board of Equalization, and neither admit nor deny the allegations in complainant's bill of complaint concerning the same, but call for strict proof thereof; but these defendants state and allege the fact to be that the said State Board of Equalization at

its regular session in the year 1900 did make an alleged assessment of the capital stock and franchise of complainant above the equalized full value of complainant's tangible property assessed as aforesaid, at an alleged full value of $1,625,000 and at an alleged assessed value of $325,000; but these defendants state and allege the fact to be that the full fair cash value of complainant's capital stock and franchise on April 1, 1900, was far in excess of the amount alleged to have been ascertained by the State Board of Equalization as aforesaid, and was in excess of the sum of $12,271,875; that notwithstanding the fair cash value of complainant's capital stock and franchise as aforesaid, the State Board of Equalization, in total disregard of its duty as required by law, wilfully and fraudulently found the full value of complainant's capital stock and franchise, over and above the value of its tangible property, at the sum above set forth and set down as assessment of the same at one-fifth thereof, which said fraudulent and illegal action on the part of the said State Board of Equalization in relation to the valuation and assessment of complainant's property was had by and with the concurrent fraudulent action of complainant itself in its failure to properly list and schedule its property
92 for purposes of taxation, and to furnish the statements required by law, and its fraudulent representations to the said State Board. These defendants further allege and state the fact to be that the said alleged assessment was and has been, long prior to the filing of this bill, held and declared by the Circuit Court of Sangamon County and by the Supreme Court of the State of Illinois to be null and void; and a re-assessment of the capital stock and franchise of the said complainant over and above the assessed value of its tangible property was ordered by the Circuit Court of Sangamon County.

5. These defendants admit that the said alleged assessment made by the State Board of Equalization was certified to the County Clerk of Cook County in the manner required by law. These defendants admit that taxes were extended against said alleged assessment, and that on or about the 6th day of February, 1901, complainant paid to the then Collector of the Town of South Chicago the sum of $27,192.75, being the full amount of the taxes extended as aforesaid; but these defendants deny that the said payment is in full discharge of the taxes properly and equitably due from complainant on account of its capital stock and franchise assessment for the year 1900. These defendants admit that no portion of the said taxes paid have been returned or tendered back to complainant.

7. These defendants admit that while the State Board of Equalization was still in session for the year 1900, a petition for mandamus was filed in the Circuit Court of Sangamon County by the People of the State of Illinois upon the relation of one Catherine Goggin, a resident of said Cook County, and Robert C. Steele, a
93 resident of said Sangamon County. These defendants say and allege the fact to be that the proceedings and judgment heretofore referred to, in and by which a new assessment was ordered

as aforesaid, were had in said mandamus proceedings in said Circuit Court of Sangamon County. These defendants further state and allege the fact to be, that it was prayed in said petition for mandamus that said State Board of Equalization be commanded to make a lawful assessment for the year 1900 upon the capital stock and franchise of complainant herein and the other corporations named in said petition. These defendants admit that neither the complainant herein nor any of said other corporations were made parties defendant to said petition, but these defendants say and allege the fact to be, that this complainant and the other corporations named in said petition were requested and directed by the said State Board to appear in said mandamus proceedings by their own solicitors and make such defense or defenses as they might deem advisable, and that this complainant and said other corporations, after a due consideration of the premises, employed attorneys and counsellors, who appeared in said proceedings in the Circuit Court of Sangamon County and in the appeal taken to the Supreme Court of the State of Illinois, and made such defenses as they deemed advisable, which defenses were made for the complainant herein and the said other corporations as fully and effectually as if this complainant and said other corporations had been parties defendant to said petition for mandamus by name. These defendants admit that final judgment was rendered by the Circuit Court of Sangamon County, and that an appeal was prayed
94 to the Supreme Court of the State of Illinois; but these defendants have no knowledge or information, save as contained in said bill of complaint, as to what defenses were interposed in said Circuit Court or in said Supreme Court, and neither admit nor deny the allegations in said bill concerning the same, but call for strict proof thereof. These defendants admit that the Supreme Court of Illinois on or about the 24th day of October, 1901, affirmed the said judgment of said Circuit Court of Sangamon County, and that thereafter a peremptory writ of mandamus was issued by the Circuit Court of Sangamon County commanding substantially as on pages 12 and 13 of complainant's bill of complaint set forth.

8. These defendants admit that the State Board of Equalization of the State of Illinois convened in regular annual meeting at the City of Springfield on or about the 10th day of September, 1901; that prior thereto an election had intervened and that the membership of said Board had largely changed. These defendants further admit that while said State Board was in regular session for the year 1900 said writ of mandamus was duly served upon the members thereof; that complainant appeared before said State Board and was given a full opportunity to make suggestions relative to the proposed new assessment, and that complainant submitted to the said State Board such information concerning the value of its capital stock and franchise and other properties as it deemed advisable; but these defendants say that they have no knowledge or information, save as contained in the said bill of complaint, as to what information was furnished to said State Board, and neither admit nor deny
95 the allegations in said bill concerning the same, but call for strict proof thereof. These defendants further answering

say as to the allegations in said bill of complaint contained, that the said State Board by its counsel appeared before the Circuit Court of Sangamon County and applied for an extension of time in which to make its return to said mandamus writ, they have no knowledge and are not informed, save as by said bill of complaint, and neither admit nor deny the same, but if the same should become material to the issues herein call for strict proof thereof. And as to the allegations in said bill of complaint contained, as to what disposition was made of said application, and as to the language alleged to have been used by the judge of said Circuit Court, these defendants say that they have no knowledge or information, save as by said bill, and neither admit nor deny the same, but if the same should become material to the issues herein, call for strict proof thereof. These defendants admit that on or about the 20th day of November, 1901, the said State Board of Equalization made an assessment of the capital stock and franchise of the complainant and fixed the full fair cash value thereof at the sum of $12,271,875 and the assessed value at the sum of $2,454,375, and that they deducted from said assessed value the equalized assessed value of tangible property assessed by the local assessors leaving a net assessment of the capital stock, including franchise, being excess of assessed value of capital stock over equalized assessment of tangible property of $1,800,761. And these defendants further state that the said State Board made a new assessment of the capital stock and franchise against all
96 cor-rations named in said writ of mandamus; but these defendants say that they have no knowledge or information, save as by said bill of complaint, of the method or basis of valuation used by the said State Board of Equalization in making said assessment, and neither admit nor deny the allegations in complainant's bill of complaint concerning the same, but if the same should become material to the issues herein, call for strict proof thereof. And these defendants further answering as to the allegations in paragraph 8th of complainant's bill of complaint concerning the assessments for the year 1900, and the methods and rules pursued by the State Board of Equalization in making assessments for the year 1901, and as to what knowledge, if any, the members of said State Board had of the alleged fact that property generally throughout the State was assessed at less than its actual fair cash value for the year 1900, and as to the total assessments in the State and in the County of Cook for the years 1899, 1900 and 1901, say that they have no knowledge or information, save as contained in said bill of complaint concerning the same, and neither admit nor deny the same, but if the same should become material to the issues herein call for strict proof thereof. These defendants further answering admit that the State Board of Equalization in the year 1900 adopted certain pretended rules for making capital stock assessments, and that the said rules were by the Supreme Court of the State of Illinois held and declared and adjudged to be invalid; but these defendants deny that said State Board thereafter, and until on or about the 10th day of December, 1901, had no rules concerning the mode of making capital stock assess-
97 ments; but these defendants state and allege the fact to be, that the rules of the said State Board in force prior to November,

1900, remained in full force and effect until on or about the 10th day of December, 1901, when the said State Board adopted new rules in which it was provided substantially as in paragraph 8th of complainant's bill of complaint alleged. These defendants further answering deny that the said State Board of Equalization in 1901, in making the assessment of the capital stock and franchise of complainant for the year 1900, failed to make any reduction in said assessment on account of a former assessment; but these defendants say that they have no knowledge or information whether said State Board failed to make any reduction in said assessment on account of complainant's capital invested in patent rights or licenses, and neither admit nor deny the allegations concerning the same; but these defendants say that by law no deduction should be made by reason of the capital invested in patent rights or licenses. And these defendants further answering deny that the members of the said State Board in making said assessment were or felt themselves to be under specific instruction from the Circuit Court of Sangamon County, or that they were or considered themselves to be debarred from the exercise of their independent judgment and discretion; but these defendants state and allege the fact to be that the said State Board of Equalization made the assessments aforesaid of their own free will and their independent judgment and discretion.

9. These defendants admit that said assessment was certified to the County Clerk of Cook County, and that taxes were ex-
98 tended against said assessment, and that a warrant for the collection of the same was delivered to the defendant Maurice Fitzgerald as Town Collector of the Town of South Chicago, and that the aggregate amount of such taxes is $148,805.91.

10. These defendants further answering admit that the total tax rate extended against said assessment is 7.87 per cent., and that there is included in said sum of $148,805.91 the sum of $7,086.84 interest required to be imposed under the authority of the revenue law of the State of Illinois; but these defendants deny that it was or is unlawful to include said interest in said taxes; and deny that the law of Illinois does not authorize any such interest.

11. These defendants deny that the capital stock assessment made in the year 1901 for the year 1900 of the capital stock and franchise of complainant is illegal, unequal and wrongful, or in violation of the constitution of the United States or of the constitution of the State of Illinois; and deny that the assessment of the capital stock and franchise made in the year 1900 has not been vacated by a court of competent jurisdiction; but these defendants admit that the complainant herein was not a party defendant in said mandamus proceeding in said Circuit Court of Sangamon County or in the appeal to the Supreme Court of the State of Illinois; but these defendants state and allege the fact to be that the complainant was requested to make defense, as heretofore in this answer in paragraph 7th more particularly set forth; but these defendants deny that complainant was entitled to rely upon the original assessment of its capital stock and franchise made in the year 1900, and deny that such as-
sessment could not be set aside, except in some proceeding
99 to which complainant was a party by name; and deny that the collection of the taxes against the subsequent assessment

of complainant's capital stock and franchise would be a taking of complainant's property without due process of law, or would be in violation of the provisions of the constitution of the United States or the constitution of the State of Illinois. These defendants further deny that said subsequent assessment was made without any authority of law; and deny that the same is void; and deny that complainant is or will be subjected in consequence of said assessment to any oppressive or discriminating capital stock assessment, or that it will be subjected to more than its proportionate share of taxation; and deny that said assessment was made upon a different basis than the assessment of other property in the State of Illinois. Defendants admit that complainant is not one of the class of corporations enumerated in the 4th paragraph of Sec. 3 of the general revenue law of the State of Illinois set forth on page 25 of complainant's bill of complaint; but these defendants deny that the provisions of said law are in violation of the provisions of the 14th amendment to the constitution of the United States.

12. These defendants admit that the payment of the taxes extended against the alleged assessment made in the year 1900 of the capital stock and franchise of complainant was a voluntary payment, and that under the law complainant is not entitled to recover the same. Defendants admit that it is the duty of these defendants to enforce collection of the taxes extended against the assessment of capital stock and franchise, and that unless said taxes are
100 paid or these defendants are restrained by order of a court of competent jurisdiction, it will be the duty of these defendants to levy upon the property of complainant.

And these defendants further answering say as to the allegations in said bill of complaint contained, not herein specifically answered, admitted or denied, these defendants neither admit nor deny the same, but call for strict proof thereof.

And these defendants further answering deny that the complainant is entitled to the relief or any part thereof in said bill of complaint demanded, and they pray the same advantage of this answer as if they had pleaded or demurred to the same; and they pray to be dismissed with their reasonable costs and charges in this behalf sustained.

SAMUEL B. RAYMOND,
County Treasurer and ex-Officio County Collector of Cook County,
MAURICE FITZGERALD,
Collector of the Town of South Chicago,
By EDWIN W. SIMS, *County Attorney.*
FRANK L. SHEPARD,
Ass't Co. Att'y.
WILLIAM F. STRUCKMANN,
Ass't Co. Att'y, Their Solicitors.

EDWIN W. SIMS,
County Attorney.
FRANK L. SHEPARD,
Ass't Co. Att'y.
WILLIAM F. STRUCKMANN,
Ass't Co. Att'y, Solicitors for Said Defendants.

(Endorsed:) Filed June 28, 1902, Marshall E. Sampsell, Clerk.

101 And on to-wit: the ninth day of June, 1902, there was filed in the clerk's office of said Court in said entitled cause a certain Report and Testimony in words and figures following to-wit:

Master's Report.

UNITED STATES OF AMERICA,
Northern District of Illinois, Northern Division, ss:

In the Circuit Court of the United States, Northern District of Illinois, Northern Division.

In Chancery. No. 26163.

CHICAGO EDISON COMPANY
vs.
MAURICE FITZGERALD ET AL.

Master's Report.

To the Honorable, the Judges of said Court:

In obedience to an order of the Court entered in the above entitled cause on the 25th day of April, A. D. 1902, by which it was referred to the undersigned to ascertain and report the amount of additional taxes to be paid by the complainant herein for the year 1900 upon the basis prescribed therein, and further to show an alternative calculation, as therein directed, I have been attended from time to time by the solicitors for the different parties, who have introduced before me witnesses whose testimony is herewith returned.

Upon an examination of this testimony and the exhibits offered in connection therewith, and after hearing the suggestions of counsel at length, I find and report

102 First. That the amount of additional taxes to be paid by the complainant herein, as aforesaid, is the sum of Forty-one thousand three hundred thirty-six dollars and sixty one cents ($41,336.61.)

This result is the same as that arrived — by the computation shown in the following statement, which has been furnished by the counsel for the complainant herein, and which I find to be established by the testimony.

Calculation of Additional Taxes to be Paid by Complainant for Fiscal Year Beginning April 1, 1900, and Ending March 31, 1901.

Net earnings according to Company's Books		$902,958.59
Add all Taxes charged against expense for the year being a mixed account made up of a part of the taxes of 1899 and a part of the taxes of 1900		59,737.94
Net earnings without any deduction for taxes		962,696.53
Deduct taxes of 1900 as actually heretofore paid		83,949.67
Net earnings after deducting taxes of 1900 actually paid		878,746.86
Deduct Insurance Fund not charged against operating expenses	8,000.00	
Deduct 6% of value of shares of stock bonds and cash paid for patent rights and licenses not taxable being 6% of $670,952.39	40,257.14	
Deduct for Depreciation 6% on personal property valued at $3,142,857.00 being $188,571.42 less $81,681.59 previously charged in operating expenses.	106,889.83	
Deduct additional Taxes to be paid under Opinion	41,336.61	196,483.58
Net Earnings to be Capitalized		682,263.28
103 Above net earnings Capitalized at 6%		11,371,054.66
Capitalization equalized by reduction of 30%		7,959,738.26
Divided by 5 for assessment purposes		1,591,947.65
Taxes at 7.87 on assessment		125,286.28
Taxes originally assessed and paid for 1900		83,949.67
Additional Taxes to be paid		41,336.61

Second. I further find upon the alternative calculation directed by said order to be made that the amount of additional taxes to be paid by the complainant herein is the sum of forty-eight thousand eight hundred twenty-three dollars and forty cents ($48.823.40.)

This alternative conclusion has been reached by omitting the deductions of six per cent. (6%) upon the amount of complainant's capital stock investment in patent rights and licenses and of the sum set aside by complainant and credited to an insurance fund, on account of its carrying its own insurance, as directed by said order.

Other computations upon which the contentions of defendants' counsel are based have been furnished me, and I have carefully examined and considered them and heard the suggestions of counsel in support of them, but in arriving at the conclusion heretofore stated, I have not adopted such computations because they are not

in my opinion supported by the testimony upon the basis of calculation prescribed in said order.

All of which is respectfully submitted.

HENRY W. BISHOP,
Master in Chancery of the Circuit Court of the United States, Northern District of Illinois.

Dated June 7, A. D. 1902.

104 I concur in the conclusions reached in the foregoing report.

WALTER McC. ALLEN,
Master in Chancery of the Circuit Court of the United States, Southern District of Illinois.

105 *Exhibits & Documentary Offers.*

Page.	Whose.	No.	Description.
3	Comps.	A	Calculation of taxes to be paid under Court's Opinion.
19	"	2	Alternative calculation.
21	"	3	Report of Chicago Edison Co., for fiscal year ending March 31, 1901.
"	"	4	Reprint of article in "Investors' Manual."
22	"	5	Printed copy of letters of Wm. G. Beale to Judge Grosscup, March 6, 1896.
28	"		Appropriation Ordinance of City of Chicago of April 4, 1900.
30	"		Reduction ordinance passed Oct. 8, 1900.
31	"		Levying ordinance passed April 23, 1900.
"	"		Appropriation ordinance passed 1/23/00 by Cook County.
32	"		Certified copy of tax levy for 1900 by South Park Commissioners.
37	"		Certified copy of Town of West Chicago tax levy for 1900 of $60,000. for bonded debt 7/27/00.
38	"		Certified copy of Town of Lake View levy of $60,000 for Lincoln Park for 1900, 10/11/00.
39	"		Certified copy of ordinance of town of North Chicago 10/10/00 levying various amounts.
40	"		Certified copy of ordinance of West Chicago Park Commissioners 7/18/00 levying various amounts.
47	"		Amounts collected and uncollected on above appropriation.
51	"		Amounts of taxes on warrants in favor of each municipality for 1900.
54	"		Objection of Guarantee Title & Trust Co. to Judgment of sale for delinquent taxes.

106 UNITED STATES OF AMERICA,
Northern District of Illinois, Northern Division, ss:

In the Circuit Court of the United States, Northern District of Illinois, Northern Division.

In Chancery. No. 26163.

CHICAGO EDISON COMPANY
vs.
SAMUEL B. RAYMOND, Collector, ET AL.

Testimony taken before Henry W. Bishop, Master in Chancery on Thursday, May 1, A. D. 1902 at 2:30 o'clock in the afternoon.

Present: William G. Beale, Esq., representing Isham, Lincoln and Beale, Solicitors for complainant. Frank L. Shepard, Esq., on behalf of the defendants.

WALTER M. ANTHONY, called as a witness on behalf of the complainant, being first duly sworn, was examined in chief by Mr. Beale and testified as follows:

Q. Please state your name, residence and occupation?
A. My name is Walter M. Anthony, residence Evanston, Illinois; Occupation, comptroller of the Chicago Edison Company.
Q. The comptroller of the Chicago Edison Company is the chief accounting officer and the head of the accounting department, I believe?
A. Yes, sir.
Q. How long have you been comptroller?
A. Since August, 1893.
Q. And before that time, whatever your title may have been, you have been the chief accounting officer of the Edison Company for many years?
A. Yes, sir.
107 Q. And you are thoroughly familiar with its accounts?
A. Yes, sir.
Q. Have you prepared, Mr. Anthony, a statement at my request in attempted conformity to the principles and rules laid down by Judges Grosscup and Humphrey in their opinion in the recent tax cases which is now on hearing?
A. Yes, sir.
Q. Will you please look at this paper and see if this it it?
A. Yes, sir.
Q. That is the paper that you submitted, that you prepared? Is it—the calculation?
A. Yes, sir.
Q. Have you yourself gone over the figures there?
A. I made them.
Q. You made the figures?
A. Yes, sir.

Q. You may state whether the figures on the statement are correct to the best of your knowledge and belief as they appear here and are according to the books of the company?
A. They are.
Q. And the books of the company are kept under your direction?
A. Yes, sir.
Q. And you believe them to be correct?
A. I do.

Mr. BEALE: I offer that in evidence as Exhibit A.
(Said statement is in words and figures as follows to-wit:)

108 EXHIBIT A.

Chicago Edison Company.

Calculation of Additional Taxes to be Paid Under Opinion of Judges Grosscup and Humphrey, Fiscal Year Beginning April 1, 1900, and Ending March 31st, 1901.

Net earnings according to Company's books		$902,958.59
Add all taxes charged against expense for the year, being a mixed account made up of a part of the taxes of 1899 and a part of the taxes of 1900		59,737.94
Net earnings without any deduction for taxes		962,696.53
Deduct taxes of 1900 as actually heretofore paid		83,949.67
Net earnings after deducting taxes of 1900 actually paid		878,746.86
Deduct Insurance Fund not charged against operating expenses	8,000.00	
Deduct 6 % of value of shares of stock, Bonds and cash paid for patent rights and licenses not taxable, being 6 % of $670,952.39	40,257.14	
Deduct for repreciation 6% on personal property valued at $3,142,857.00 being $188,571.42 less $81,681.59 previously charged in operating expenses	106,889.83	
Deduct additional Taxes to be paid under Opinion	41,336.61	
		196,483.58
Net Earnings to be capitalized		682,263.28
Above net earnings capitalized at 6 %		11,371,054.66
Capitalization equalized by reduction of 30 %		7,959,738.26
Divided by 5 for assessment purposes		1,591,947.65
Taxes at 7.87 on assessment		125,286.28
Taxes originally assessed and paid for 1900		83,949.67
Additional Taxes to be paid		41,336.61

109 Q. You may state, in order that these things may get into the record satisfactorily, the amount of additional taxes as calculated by you to be paid in accordance with the opinion of the court, Mr. Anthony?

A. $41,336.61.

Q. In making this calculation what period did you take of the Edison Company's earnings?

A. I took the fiscal year beginning April 1, 1900 and closing March 31, 1901.

Q. That is the regular fiscal year of the company, that is those are the beginning and ending dates of the regular fiscal year of the company, are they?

A. Yes, sir.

Q. So that the preceding fiscal year ended on the 31st day of March, 1900?

A. Yes, sir.

Q. I asked you, I believe, to make a tentative calculation with reference to the preceding fiscal year ending on March 31, 1900, also one of the calendar year 1900, and also one of the fiscal year beginning April 1, 1900, and running to March 31, 1901, did you do that?

A. I did.

Q. Which did you find the more favorable of the two fiscal years of the company?

A. The first, beginning April 1, 1899, and ending March 31, 1900.

Q. Several thousand dollars better for the company in the matter of tax payment than the latter one was it?

A. Very much better.

Q. With reference to the calendar year and the latter fiscal year from April 1, 1900, to March 31, 1901, you may state whether there was any substantial difference?

A. Very little indeed, practically one offset the other.

Q. The net earnings appear here, Mr. Anthony as $902,958.59. That is the same amount as shown in the Edison Company's printed statement, is it not?

A. Yes.

110 Q. And that is made up after the deduction of the operating expenses from the gross income of the company, I take it?

A. Yes, sir.

Q. In the gross expenses of the company for this fiscal year ending March 31, 1901, what taxes, not what in amount but what year's taxes, or part of year's taxes were charged?

A. Nine months of the year 1899 and three months of the year 1900.

Q. That is, the fiscal year does not cover any whole year of taxes, the fiscal year of the Edison Company's accounts?

A. No.

Q. The total payment shown here as charged in the operating expenses of that year, $59,737.94, that includes those part payments, of a part of each year, does it?

A. Nine months of 1899 and three months of 1900.

Q. Your method, as I understand it, was to add those taxes to the net income and then to actually deduct the proper tax for the year 1900?

A. In this statement, yes.

Q. So that you added that $59,737.94 to the $902,958.59 and then from the total you deducted the taxes actually paid for the year 1900 which were $83,949.67?

A. Yes, sir.

Q. And that gave you as the net income for the year, after deducting the taxes of that specific year, $878,746.86?

A. Yes, sir.

Q. From that you have made certain deductions which have appeared in four items, the first one is a deduction for an insurance fund of $8,000.00. Was there any insurance aside from that $8,000.00, or was there any insurance premium whatever rather, charged up in operating expenses?

A. Oh, yes.

Q. What insurance?

A. Insurance on the property as a whole. There is certain property that we carry our own insurance on; this represents property we carried our own insurance on.

Q. So there was some additional insurance?

A. Yes.

111 Q. But this is a regular item of $8,000.00 charged up each year, is it, for an insurance fund?

A. Yes.

Q. That represents the insurance premium on property on which the company carries its own insurance?

A. Yes.

Q. That has been done for several years, has it not?

A. Yes, sir.

Q. The same practice followed?

A. Yes, sir.

Q. Do you remember when it was begun?

A. I think in 1894. 1894 or '95, there was one year it was not followed. 1886.

Q. Several years ago?

A. Oh, yes, several years ago four or five.

Q. What I want to know is whether its origin has any connection with this tax litigation?

A. None at all.

Q. The next item is the deduction for the company's investment in patent rights and licenses, and you have taken 6 % *per cent.* on $670,952.39, what is that, this $670,952.39?

A. It represents the shares of stock, the bonds and the actual cash paid to licensors for patent rights and licenses.

Q. In speaking of the shares of stock in there, at what price were the shares of stock taken in making up this amount?

A. 125.

Q. At $125.00 value?

A. At $125.00 value.

Q. Do you know why that particular figure was taken?

A. The same figure was taken by the Board of Equalization, I understand.

Q. In valuing the shares?

A. In valuing the shares of stock.

Q. At what figure are the bonds included in there?

A. Absolutely par, $1,000.00 72 bonds.

Q. Attached to the bill of complaint in this case is a printed exhibit called Exhibit B to which I direct your attention and
112 ask you to look at page 3 and state whether those license figures as used by you are the same as shown in there as the investment of the company April 1, 1900?

A. Yes, sir.

Q. The same figures, are they?

A. The same figures.

Q. So that amount actually has been turned over to the licensor companies heretofore and before that time for patent rights and licenses?

A. Yes, sir.

Q. Now, Mr. Anthony, ordinarily that would be deducted from the gross valuation of the company's property, but you have proceeded a little differently and it apparently works out with the same result, and your method was to deduct, was it, six per cent. upon that from the net earnings of the company before capitalization under the rule laid down by the judges?

A. My method was to capitalize the net earnings, then to deduct $670,952.39 and then capitalize that; the difference between the first net earnings and the second net earnings would make the difference of $40,257.14.

Q. Isn't that just what you did not do? That would be the natural way, but didn't you find a method of computation easier by taking the gross percentage of six per cent. on this amount and charge it as an annual earning rather than deduct the gross amount from the capitalized earning?

A. It amounts to the same thing, we proved it that way.

Q. This $40,257.14 then, as I understand you, is six per cent. on the amount which has actually been paid out by the company for licenses and patent rights under the laws of the United States and taking the shares of stock at 125?

A. Yes, sir.

Q. Another item is the one for depreciation on personal property. You have taken the valuation of personal property at $3,142,857.00. How did you arrive at that figure?

113 A. Our assessment was $440,000.00 and 70 per cent. equalized capitalization was $2,200,000.00 five times that equals 70 per cent. of the total; naturally the total would be $3,142,857.00 or 100 per cent.

Q. If I understand you right then, you have arrived at your valuation by taking primarily the value placed upon the company's tangible personal property by the assessing officers?

A. Yes, sir.

Q. Assuming that they had not overvalued it?
A. Yes, sir.
Q. And taking the valuation as equalized by the State Board you treated that, under the opinion of the court, as being 70 per cent. of the true valuation and figured from that full valuation what 100 per cent. would be?
A. Yes, sir.
Q. The equalized assessed valuation was $440,000.00 was it?
A. Yes, sir.
Q. And that would make the equalized full valuation what?
A. $2,200,000.00.
Q. $2,200,000.00?
A. Yes, sir.
Q. And that divided by 70 per cent. would make the valuation you have here?
A. Multiplied by 100.
Q. Then you have calculated that as the fair amount for the full depreciation to be allowed under the opinion of the court?
A. Yes, sir.
Q. Does that valuation include any real estate?
A. No, sir.
Q. What depreciation is actually charged in the operation expense of the company, if any?
A. $81,681.59.
Q. How does that appear on the books of the company?
A. In a special account called "Operating and Reconstruction."
114 Q. "Operating and Reconstruction?"
A. Yes, sir.
Q. It is practically as I understand, a replacement account?
A. Replacement and renewal account.
Q. Replacement and renewal?
A. Yes, sir.
Q. Does it include any items for extensions, enlargements, improvements to the plant?
A. No, sir.
Q. Do the operating expenses which are there reported by the company include any extensions or additions or improvements to its property?
A. No, sir.
Q. Having therefore deducted the $81,681.59 already, you credited that against the total allowance which you would otherwise be permitted under the opinion of the court, did you?
A. Yes, sir.
Q. That made the net allowance by the court $106,889.83?
A. Yes, sir.
Q. A further item appears of $41,336.61 and that is your calculation of the additional taxes, as I understand?
A. Yes, sir.
Q. Those four items of $8,000.00, $40,257.14, $106,889.83 and $41,336.61 are added together and their sum deducted from the

previously stated net earnings to arrive at the true net earnings to be used as a basis for capitalization under the court's opinion; that is correct, is it?

A. Yes, sir.

Q. And you found the net earnings to be capitalized on that basis $682,263.28?

A. Yes, sir.

Q. This was capitalized by multiplying this by 100 and dividing by 6 I suppose?

A. Yes, sir.

Q. Making the valuation placed upon the property of $11,371,054.66?

A. Yes, sir.

Mr. BEALE:

—. ——.

Q. The rest of the calculation shows for itself, I do not know as I care to ask any questions about that.

115 Q. I will ask you whether the taxes stated on this memorandum $83,949.67 as having been originally assessed and paid for 1900 represent the true and complete amount of taxes, and whether they have actually been paid at that figure by the company?

A. Yes, sir.

Mr. BEALE: I think that is all.

Cross-examination by Mr. SHEPARD:

Q. Mr. Anthony, how do you arrive at your sum of $902,958.59 as the net earnings, according to your statement?

A. The gross earnings include merchandise sales and were $2,517,219.02——

Q. Including merchandise?

A. Including merchandise sales; we are really a lighting company.

Q. That represents your entire gross receipts for the year, for the period comprehended by this statement?

A. Yes, sir.

Q. Your receipts from every source?

A. From every source.

Q. Does that accord with the published financial statement?

A. Yes, sir.

Q. From that what did you deduct?

A. From that I deducted the total expenses, including cost of merchandise sales, the total being $1,614,260.43.

Q. That likewise accords with your published statement, published annual statement?

A. Yes, sir.

Q. In your total expenses you have included the cost of merchandise sold, in here?

A. Yes, sir, because in the receipts we included the billed prices for it.

Q. Do you include in your deduction any amount for merchandise purchased during the year and not sold during the year?
A. No, sir.
Q. What items are embraced in the total expenses, exclusive of the expenditures for merchandise?
116 A. The general expenses of the company, that is the administrative expenses, the expenses of running the various departments and operating the various electric light plants.
Q. Have you included in that item the item of $81,681.59?
A. Yes, sir.
Q. That is included in this item of $1,614,260.43?
A. Yes, sir.
Q. Is there any other sum included in that item for renewals repairs, maintenance charge, or charge for other depreciation of your plant?
A. Ordinary running repairs, that is all.
Q. Ordinary running repairs are included in this same exclusive of the $81,681.59?
A. In addition to that $81,681.59.
Q. In addition to that?
A. Yes, sir, ordinary operating repairs.
Q. Do you know how much that amounts to?
A. No.
Q. Can you give an approximation of the amount?
A. No, I could not, nothing but little, petty things, small.
Q. Can you give me some idea of the amount?
A. No, I could not give you that?
Q. Would they amount to $50,000.00 or $100,000.00?
A. I would not want to say I would not say.
Q. You keep a separate account for construction or extension do you?
A. Oh, yes.
Q. What do you designate it as?
A. Plant installation.
Q. That is for your extensions and new constructions?
A. Yes, sir.
Q. And everything that goes in of that character goes into that account, does it?
A. Yes, sir.
Q. Now, what I want to get at is whether or not the betterment of your property, construction, reconstruction or extension, added any to this aggregate sum of $1,614,260.43?
A. Nothing.
117 Q. What are the items, the character rather of the work for which you have charged in this account, in the nature of the improvements or repairs?
A. What amount, the $1,614,260.43?
Q. Yes, what your pay rolls, or anything of that kind for repairs?

Mr. BEALE: As I understand it you are not limiting it to that total of $81,000.00?

Mr. SHEPARD: As I understand, there is expenditure outside of that $81,000.00.

Mr. BEALE: There is as I explained, but nobody can tell what it is, they are so trivial things; there is not any separate account kept of them on the books. That is it, isn't it, Mr. Anthony?

The WITNESS: Yes.

Q. Is there anything entering into this $1,614,260.43, any expenditure, that has been made for replacement of property that has been worn out?

A. No, sir.

Q. Or for extension?

A. No, sir.

Q. Or for the betterment of your plant?

A. No, sir.

Q. Or for reconstruction?

A. No, sir.

Q. Did your company own any vacant real estate in 1900?

A. One lot, one piece as I remember.

Q. Do you know what its value amounted to?

A. About $17,000.00.

Q. Do you know what the taxes on that property were?

A. $100.00 a year I think.

Q. Your company owns considerable improved real estate, does it not?

A. It only owns the real estate upon which its plant stands.

118 Q. The improved property of the company is used exclusively by the company for the operation of its business?

A. Yes, sir, operation of the plant.

Q. Did you include in this $1,614,260.43 expenditure item, interest on your bonds?

A. No, sir.

Q. You did not?

A. No, sir.

Q. Does the Company own the patent rights for which you have charged here the sum of $670,952.39?

A. We are licensees of the licensors who own the original patents.

Q. Have you the exclusive rights to use the patents acquired by your company for which you have charged in this statement $670,952.39?

A. In Cook County, yes.

Mr. BEALE: Not all of them, some of them are applied to other uses but in the main we are the exclusive licensees of this system of patents in Cook County, the Edison patents.

Signature waived by agreement of counsel.

119 Chicago Edison Company.

Calculation of Additional Taxes to be Pdid under Opinion of Judges Grosscup and Humphrey. Fiscal Year Beginning April 1, 1900, *and Ending March* 31*st,* 1901.

Net earnings according to Company's books.....		$902,958.59
Add all taxes charged against expense for the year being a mixed account made up of a part of the taxes of 1899 and a part of the taxes of 1900....		59,737.94
Net earnings without any deduction for taxes.....		962,696.53
Deduct taxes of 1900 as actually heretofore paid....		83,949.67
Net earnings after deducting taxes of 1900 actually paid		878,746.86
Deduct Insurance Fund not charged against operating expenses.....	8,000.00	
Deduct 6% of value of shares of stock, bonds and cash paid for patent rights and licenses not taxable, being 6% of $670,952.39.....	40,257.14	
Deduct for rdepreciation 6% on personal property valued at $3,142,857.00 being $188,571.42 less $81,681.59 previously charged in operating expenses.....	106,889.83	
Deduct additional Taxes to be paid under Opinion.....	41,336.61	
		196,483.58
Net earnings to be capitalized.....		682,263.28
Above net earnings capitalized at 6%.....		11,371,054.66
Capitalization equalized by reduction of 30%.....		7,959,738.26
Divided by 5 for assessment purposes.....		1,591,947.65
Taxes at 7.87 on assessment.....		125,286.28
Taxes originally assessed and paid for 1900.....		83,949.67
Additional Taxes to be paid.....		41,336.61

120 10:00 a. m., WEDNESDAY, *May* 14, 1902.

Parties met pursuant to notice.
Present: Mr. Beale, Mr. Shepard.

WILLIAM L. SOUTHWORTH, called as a witness on behalf of the defendant, being first duly sworn, was examined in chief by Mr. Shepard and testified as followd:

Q. What is your name?
A. William L. Southworth.
Q. Where is your residence?
A. 536 Ogden street, Chicago.

Q. Your occupation?
A. Clerk in the County clerk's office.
Q. How long have you been a clerk in the County Clerk's office?
A. Fifteen years.
Q. The County Clerk of Cook County?
A. Yes, sir.
Q. Mr. Southworth, the principal place of business and office of the Chicago Edison Company is in the town of South Chicago, Cook County, Illinois, is it not?
A. It is assessed in the town of South Chicago and its general office is in the South Town.
Q. What was the rate by which taxes were extended for the town of South Chicago for the year 1900?
A. At 8.36 7/10. in the town of South Chicago.
Q. By what rate were the taxes extended by the County Clerk on the omitted assessment in the town of South Chicago?
A. 7.87.
Q. On the one hundred dollars?
A. Yes.

Mr. SHEPARD: That is all.
Signature waived by agreement of counsel.

121 9:30 a. m., MONDAY, *May* 19, 1902.

Parties met pursuant to notice.
Present, Mr. Beale, Mr. Shepard.

WALTER M. ANTHONY, recalled for further examination on behalf of the complainant, was examined in chief by Mr. Beale, and testified as follows:

Mr. BEALE: The order of reference, Mr. Master, provides that there should be an alternative calculation made by omitting for that calculation two items of deduction. As a matter of convenience I have asked Mr. Anthony to make up that alternative calculation and he states he has done so, and I am calling him now in order to put in that proof.

Q. Mr. Anthony, you have previously testified in this case you are the same witness who has testified?
A. Yes, sir.
Q. At my request, have you made an alternative calculation, under the opinion of Judges Grosscup and Humphrey, making no deduction for the capital of the company invested in patent rights and licenses and the insurance fund carried by the company?
A. I have made such a statement.
Q. Have you that statement with you?
A. Yes, sir.

Mr. BEALE: I offer this statement in evidence.
(Said statement marked Complainant's Exhibit 2 and is hereto attached.)

Q. If I understand you, Mr. Anthony, this is made on precisely the same lines as the other one, except there are four deductions in the other and only two in this?

A. That is correct.

122 Q. Is this alternative calculation correct according to your best judgment?

A. According to my best judgment, yes, sir.

Q. Will you please look at the two papers handed you and state what they are?

A. This is the report of the Chicago Edison Company for the fiscal year ending March 31, 1901, as made to each and every stockholder.

Q. That is the same year which you have taken as the basis for your calculations, is it not?

A. Yes, sir.

Q. The same fiscal year?

A. Yes, sir.

Q. Do you know anything about that report, whether it is correct or not?

A. It is correct to the best of my ability, I made it up.

Q. You made it up?

A. Yes, sir.

Q. What is that other paper?

A. This is a reprint of an article that appeared in the Investors' Manual issued by the Economist, a financial paper of Chicago.

Q. Have you ever looked at those figures in that reprint to see whether they were correctly stated or not?

A. I personally corrected them every year.

Q. They are correct?

A. To my best belief and judgment they are correct, yes, sir.

Mr. BEALE: I offer these two in evidence and ask that they be marked complainant's exhibits.

(Said papers marked complainant's Exhibits 3 and 4 respectively and are hereto attached.)

Q. Mr. Anthony, what was the local assessment of the company's tangible property as of April 1, 1901, just the end of that fiscal year?

Mr. SHEPARD: Objected to as incompetent and immaterial.

A. $3,715,000.00 as I remember

123 Q. That appears on page 2 of Exhibit A to the bill of complaint which exhibit was the statement of the company presented to the State Board of Equalization. I believe you made affidavit to the correctness of that exhibit when it was filed with the State Board, did you not?

A. Yes, sir.

Q. Will you please glance at pages 1 and 2 of this exhibit now and state whether to the best of your present recollection they were the correct figures given on those two pages?

Mr. SHEPARD: Objected to as incompetent and immaterial.

A. They are correct according to my best belief and judgment.

Q. And the same thing is true of the entire exhibit, is it not, so far as your present recollection goes?

A. Yes, sir.

Mr. BEALE: I also offer in evidence a printed copy of a letter dated March 6, 1902, which I wrote to Judge Grosscup primarily, for the purpose of sending to him a copy of a letter which I had received from the Secretary of the State Board of Equalization dated December 30, 1901, giving some explanation of how the capital stock assessment against the company for the year 1901 was made up. I have the original of that letter but this is the more convenient form in which to introduce it, and I am offering it here merely to get the figures in so when we come to argument we can refer to the letter. I suppose in that form it is not competent, Mr. Shepard, but you understand I have the original which is subject to your inspection.

Mr. SHEPARD: I object to the letter, not to the form in which it is offered but to the letter as incompetent and immaterial, per-
124 taining to the assessment of 1901 and not to the assessment for 1900, the assessment here in question.

(Said copy of said letter marked complainant's Exhibit 5 and is hereto attached.)

Cross-examination by Mr. SHEPARD:

Q. In your alternative calculation submitted this morning, you have figured the tax, according to your calculations, upon the net receipts with the amount of capital stock invested in patent rights, licenses and so forth, and with the amount set aside for insurance left in?

A. Yes, I have not deducted them.

Mr. SHEPARD: That is all.

Signature waived by agreement of counsel.

125 COMP. EX. 2. 5/19/02. H. W. B.

Chicago Edison Company.

Alternative Calculation of Additional Taxes to be paid under Opinion of Judges Grosscup and Humphrey, but making no deduction for Capital Investment in Patent Rights and Licenses nor for Insurance Fund carried by the Company. Fiscal Year Beginning April 1st, 1900 and ending March 31st, 1901.

Net Earnings according to Company's books.....		$902,958.59
Add all taxes charged against Expense for the year, being a mixed account made up of a part of the Taxes of 1899 and a part of the taxes of 1900....		59,737.94
Net Earnings without any deduction for taxes.....		$962,696.53
Deduct taxes of 1900 as actually heretofore paid.....		83,949.67
Net Earnings after deducting Taxes of 1900 actually paid		$878,746.86
Deduct for depreciation 6% on personal Property valued at $3,142,857.00 being $188,571.42 less $81,618.59 previously charged in operating expenses.....	$106,889.83	
Deduct Additional Taxes to be paid under the opinion.....	48,823.40	155,713.23
Net Earnings to be capitalized.....		$723,033.63
Above Net Earnings capitalized at 6%	$12,050,560.50	
Capitalization equalized by reduction of 30%.....	8,435,392.35	
Divided by 5 for assessment purposes	1,687,078.47	
Taxes at 7.87 on assessment.....	132,773.07	
Taxes originally assessed and paid for 1900	83,949.67	
Additional Taxes to be paid.....	$48,823.40	

126 COMP. EX. 3. 5/19/02. H. W. B.

Report of the Chicago Edison Company for the Fiscal Year Ending March 31, 1901.

127 Chicago Edison Company.

Chicago.

Annual Meeting of Stockholders.

To the stockholders:

The Annual Meeting of the Stockholders of the Chicago Edison Company will be held at its general offices, Edison Building, 139 Adams Street, Chicago, Ill., on Monday, the 10th day of June, 1901, at 12 o'clock noon, for the following purposes:

1st. To elect a Board of Directors for the ensuing year.

2d. The Board of Directors will recommend that an increase of the Company's Capital Stock to ten million dollars be authorized, the additional stock to be issued in such installments and at such times as the Board of Directors shall think best for the interests of the Company.

3d. To transact such other business as may lawfully come before the meeting.

Stockholders who are unable to be present at the meeting are requested to send a proxy.

The Transfer Books of the Company will be closed at 3 o'clock p. m., June 4th instant, and will be reopened June 11th at 10 o'clock a. m.

F. S. GORTON, *Secretary.*

127½ Chicago Edison Company.

Report of the Board of Directors to the Stockholders at the Annual Meeting, June 10, 1901, *Chicago, Illinois.*

128 Chicago Edison Company,

Chicago, Ill.

Board of Directors.

Edward L. Brewster.
Joseph Leiter.
Robert T. Lincoln.
John J. Mitchell.
Samuel Insull.
Erskine M. Phelps.
A. A. Sprague.
Jesse Spaulding.
A. F. Seeberger.
Lambert Tree.
F. S. Gorton.

Executive Committee.

Edward L. Brewster. Joseph Leiter. Robt. T. Lincoln.
Erskine M. Phelps. Samuel Insull.

Officers.

Samuel Insull, President.
Robt. T. Lincoln, Vice-President.
F. S. Gorton, Secretary and Treasurer.
W. A. Fox, Assistant Secretary.
W. M. Anthony, Comptroller.
L. A. Ferguson, General Superintendent.

General Offices, Edison Building,
139 Adams St.

Station No. 1.....Corner Harrison and Charles Streets.
Station No. 2.....2640 Wabash Avenue.
Station No. 4.....Oak and Clark Streets.
Station No. 5.....Market and Washington Streets.
Sub Station (Storage Battery).....139 Adams Street.

129 To the Stockholders of the Chicago Edison Company:

The Directors herewith submit a report and a condensed Balance Sheet and Income Account for the fiscal year ending March 31, 1901.

The following table shows the increase in the Company's connected business for the past eight years:

Equivalent	16	C. P.	Lamps,	connected	March 31, 1894,	238,124
"	16	"	"	"	March 31, 1895,	272,410
"	16	"	"	"	March 31, 1896,	315,732
"	16	"	"	"	March 31, 1897,	355,140
"	16	"	"	"	March 31, 1898,	436,083
"	16	"	"	"	March 31, 1899,	489,583
"	16	"	"	"	March 31, 1900,	594,202
"	16	"	"	"	March 31, 1901,	732,235

The Earnings and Expenses for the fiscal year ending March 31, 1901, are as follows:

Gross Earnings (including Merchandise Sales)	$2,517,219 02	
Expenses (including Cost of Merchandise Sales)	1,614,260 43	
Net Income for the year		$902,958 59
Charges against Income:		
Interest on Bonds and Debentures	$279,791 58	
Dividends	477,688 00	
		757,479 58
Balance		$145,479 01

130 In the last annual report attention was drawn to a proposed installation of additional capacity (amounting to 5,000 horse power, in steam and electrical machinery) in the principal generating station of the Company, located at Harrison Street and the river.

The increase in the Company's business during the past fiscal year has rendered it necessary for your Board of Directors to make a still further enlargement of the Harrison Street plant, and an installation of 5,000 horse power additional to that contemplated at the time of the last report is now in course of construction.

In addition, large extensions to the underground system of the Company, and the equipment of four sub-stations, have been ordered by the Board to take care of the increased business obtained in the territory already covered by the Company's mains, and also for the purpose of extending the same into streets not yet supplied with electric light and power service.

For the purpose of providing the funds necessary to cover the expenditures mentioned, and to take care of further capital requirements from time to time, the Board of Directors recommend that an increase in the Capital Stock amounting to $4,000,000 be authorized by the Stockholders at the forthcoming Annual Meeting, said additional stock to be issued at such times and in such amounts as the Board may think desirable. If the authority asked for is granted, your Board is expecting to issue $900,000 of stock at par to the stockholders on August 1st next.

By order of the Board.

SAMUEL INSULL, *President.*

131 Chicago Edison Company

Dr. *Condensed Balance Sheet, March 31, 1901.* Cr.

Plants, Real Estate, and Franchises		$11,392,971 38	Capital Stock	$6,000,000 00
Work in progress and material (less Collections on Account)	$241,541 64		Six per cent Debentures	1,483,000 00
Accounts and Notes Receivable	563,983 69		Five per cent First Mortgage Gold Bonds	4,025,000 00
Cash	156,484 83		Accounts and Notes Payable	70,895 61
		962,010 16	Depreciation Reserve	420,000 00
			Insurance Account	52,000 00
			Undivided Profits	250,252 20
			Sundry Open Accounts	53,833 73
		$12,354,981 54		$12,354,981 54

In addition to the liabilities given above, the company guarantees the principal and interest on $224,000 and the interest (but not the principal) on $36,000 of the Bonds of the Chicago Sectional Electric Underground Company in part consideration of its lease of certain conduits belonging to the Underground Company.

W. M. ANTHONY, *Comptroller.*

E. & O. E.

Chicago, March 31, 1901.

Chicago Edison Company.

Dr. *Income Account, Year Ending March 31, 1901.* Cr.

Interest on Bonds and Debentures		$279,791 58	Balance, March 31, 1900	$182,773 19
			Net Income from sale of current and other sources.	902,958 59
DIVIDENDS:				
May 1, 1900	$119,422 00			
Aug. 1, 1900	119,422 00			
Nov. 1, 1900	119,422 00			
Feb. 1, 1901	119,422 00			
		477,688 00		
Depreciation Reserve		70,000 00		
Insurance Account		8,000 00		
Balance		250,252 20		
		$1,085,731 78		$1,085,731 78

E. & O. E.

W. M. ANTHONY, *Comptroller.*

Chicago, March 31, 1901.

133 COMP. EX. 4. 3/19/'02. H. W. B.

1900-1901.

134 Chicago Edison Company.

[From the Investors' Manual, issued by The Economist, Chicago.]

Liabilities.

Capital Stock.

Authorized	$6,000,000	Outstanding	$6,000,000

Bonds.

First-mortgage 5 per cent, gold, due July 1, 1926; interest payable April and October at Merchants' Loan and Trust Co	4,025,000
Debentures, 6 per cent, due Jan. 1, 1913; interest payable January and July at Merchants' Loan and Trust Co	1,483,000
	$11,508,000

Dividends: Since 1889 the company has paid 8 per cent a year, in quarterly dividends, payable on the first days of February, May, August and November.

The capital stock record is as follows:

At organization, April 29, 1887		$500,000
Increase authorized May 10, 1890	$250,000	
Increase authorized Aug. 20, 1891	250,000	
Increase authorized May 11, 1892	500,000	
Increase authorized Feb. 14, 1893	1,500,000	
Increase authorized Feb. 21, 1894	2,000,000	
Increase authorized June 12, 1899	1,000,000	
		5,500,000
Total authorized May 1, 1900		$6,000,000

Operations.

From organization, the amount of net earnings which would be available for payment of bond interest in each year has been as follows:

Year ending Dec. 31, 1888	$23,621	Year ending March 31, 1896	$562,567
Year ending Dec. 31, 1889	51,664	Year ending March 31, 1897	599,674
Year ending Dec. 31, 1890	123,123	Year ending March 31, 1898	676,525
Year ending Dec. 31, 1891	160,955	Year ending March 31, 1899	740,256
Year ending Dec. 31, 1892	327,854	Year ending March 31, 1900	812,390
15 mos. ending March 31, 1894	680,777	Year ending March 31, 1901	902,959
Year ending March 31, 1895	483,665		

Earnings.

	1892.	1893–'94.*	1894–'95.	1895–'96.	1896–'97.	1897–'98.	1898–'99.	1899–1900.	1900–'01.
Gross	$872,665	$2,141,779	$1,437,042	$1,461,084	$1,548,608	$1,661,863	$1,954,877	$2,133,827	$2,517,219
Optg. expenses	544,811	1,461,102	953,377	898,517	948,934	985,338	1,214,621	1,321,437	1,614,260
Net	327,854	680,677	483,665	562,567	599,674	676,525	740,256	812,390	902,959
Interest	6,798	171,934	155,128	158,135	180,334	226,681	262,524	265,243	279,792
Earned on stock	321,056	508,743	328,537	404,432	419,340	449,844	477,732	547,147	623,167
Dividends	90,000	219,119	319,038	389,382	397,518	398,072	398,072	398,072	477,688

Balance Sheet.

Assets.

	Dec. 31, 1892.	March 31, 1894.	March 31, 1895.	March 31, 1896.	March 31, 1897.	March 31, 1898.	March 31, 1899.	March 31, 1900.	March 31, 1901.
Plants, real estate, etc.	$2,019,184	$6,035,279	$7,226,390	$7,705,517	$8,630,330	$9,553,209	$10,098,421	$10,817,676	$11,392,971
Work in progress, etc	141,477	219,095	135,959	109,915	136,405	161,549	180,214	236,484	241,542
Accounts receivable	199,109	238,891	199,422	190,329	197,799	211,110	237,433	435,920	563,984
Cash	110,035	254,286	207,749	48,920	206,541	86,826	79,085	65,261	156,485
Due from stockholders	.....	450,277	.....	.....	.....	.....	.....	.....	.....
Open accounts	.....	.....	.....	.....	.....	48,458	.....	.....	.....
	$2,469,805	$7,197,828	$7,769,520	$8,054,681	$9,171,075	$10,061,152	$10,595,153	$11,555,341	$12,354,982

Liabilities.

Capital stock	$1,500,000	$4,200,000	$4,947,300	$4,948,437	$4,975,900	$4,975,900	$4,975,900	$5,971,100	$6,000,000
Bonds and debentures	130,300	2,325,300	2,325,300	2,503,300	3,750,000	4,458,000	4,808,000	4,808,000	5,508,000
Ac'ts and notes payable	364,478	393,450	220,918	304,426	131,066	279,213	332,462	160,016	70,896
Open accounts	.....	24,818	12,244	19,711	17,842	.....	51,092	39,452	53,834
Surplus	475,027	254,260	263,758	278,807	76,267	80,039	101,698	182,773	250,252
Depreciation reserve	.....	.....	.....	.....	200,000	240,000	290,000	350,000	420,000
Insurance fund	.....	.....	.....	.....	20,000	28,000	36,000	44,000	52,000
	$2,469,805	$7,197,828	$7,769,520	$8,054,681	$9,171,075	$10,061,152	$10,595,153	$11,555,341	$12,354,982

* Fifteen months ending March 31, 1894.

Obligations: The debentures mentioned above are redeemable at the option of the company, at par and accrued interest, on the first day of July or January of any year, upon giving not less than sixty days' notice. The original issue was $2,195,000, of which all but those shown above have been exchanged at par for the first-mortgage bonds.

The company guarantees the interest and the principal on $224,000 4 per cent bonds of the Chicago Sectional Electric Underground Company, and the interest, but not the principal on $36,000 5 per cent. bonds of the same company.

The mortgage securing the bonds shown in the table was executed July 1, 1896. It provides for an immediate issue of $3,500,000 of bonds, and for additional issues up to a limit of $6,000,000. The mortgage creates a first lien on the company's property and franchises, excepting a piece of property on Indiana avenue and its merchandise. One clause reads:

The company shall annually expend in repairs and renewals not less than $190,000, and over and above the sum annually expended for repair and renewals in the following years the company shall also credit the following sums to depreciation account: $200,000 on or before October 15, 1896; $40,000 March 31, 1898; $50,000 March 31, 1899; $60,000 March 31, 1900; $70,000 March 31, 1901; $80,000 March 31, 1902; $90,000 March 31, 1903; $100,000 March 31, 1904; and $100,000 on the 31st of March in each and every succeeding year so long as any of the bonds secured hereby shall remain unpaid; but the company may charge the actual cost of *bona fide* extensions of its plant and appliances, made after September 15, 1896, against the credits of $40,000, $50,000, $60,000, $70,000, $80,000, $90,000 and $100,000 made on the 31st day of March, 1898, 1899, 1900, 1901, 1902, 1903 and 1904 respectively and against the annual credits made in each succeeding year to the full amount of such credit items, but no further.

The bonds are redeemable at par and accrued interest on any interest period after 1910. Issues in addition to the first $3,500,000 bear such rate of interest as the directors decide upon, and may be put out from time to time to cover the cost of extensions.

Property: Owns four central electrical power stations, the largest situated on Harrison street, being one of the most extensive and complete in the United States. It supplies electric current for light and power within the territory bounded by Thirty-ninth street, Ashland boulevard, North avenue and the lake, its wires for the most part being carried in underground conduits. The capacity of its power stations is over 20,000 indicated horse power; and the value of the plant, exclusive of good-will, was appraised at $6,844,107 in 1896 by experts appointed by the purchasers of the 5 per cent. bonds. Since that time important extensions and betterments have been made.

History: Organized in 1887 to supply electrical light and power. Holds a perpetual license from the Edison Electric Light Company of New York to use all its present and future patents in consideration of the parent company being given a percentage of all issues of secu-

rities representing new capital. The company was originally incorporated as "The Chicago Edison Company," but April 19, 1893, a consolidation with the Chicago Arc Light and Power Company was effected, and the company was reincorporated as "Chicago Edison Company." The price at which the Chicago Arc Light and Power Company was taken over was $2,195,000, and the debentures were issued for this purpose. The company's relations with the Sectional Electric Underground Company are those of a lessee, it having the right to use that company's underground conduits and guaranteeing interest and principal on the 4 per cent. bonds and interest but not principal on the 5 per cent. bonds in consideration of such use. In 1897 and 1898 various electric lighting concerns doing business outside of the boundaries above described were bought up by interests friendly to the Chicago Edison Company, and in May, 1898, these concerns were consolidated in the Commonwealth Electric Company (which see), thereby putting nearly the entire electric business within the city limits under the same management, Mr. Insull being president of both the Commonwealth and the Edison Company.

Directors: A. F. Seeberger, Robert T. Lincoln, J. J. Mitchell, F. S. Gorton, A. A. Sprague, E. M. Phelps, Jesse Spaulding, Lambert Tree, E. L. Brewster, Joseph Leiter, Samuel Insull.

Officers: President, Samuel Insull; vice-president, R. T. Lincoln; secretary and treasurer, F. S. Gorton; comptroller, W. M. Anthony.

Stock Transfers: Company's office, 139 Adams street.

Registrar: Merchants' Loan and Trust Company.

Annual Meeting: Second Monday in June. Accounts made up to March 31.

135 COMP. EX. 5. 3/19/'02. H. W. B.

(*Copy of Letter from Wm. G. Beale to Judge Grosscup, Calling Attention to Certain Errors in Report of the Capital Stock Assessment of Chicago Edison Company for* 1901.)

CHICAGO, ILL., *March* 6, 1902.

Hon. Peter S. Grosscup, United States Circuit Judge, Chicago.

DEAR SIR: In the tax suit of the Chicago Edison Company against Maurice Fitzgerald, town collector, *et al.*, pending before you and Judge Humphrey, I think it worth while to point out some curious errors in the record of the proceedings of the Illinois State Board of Equalization in the assessment for 1901, shown on page 78. This may not be material to the consideration of any question in the case, but if you happen to have occasion to look at the assessment, I think you would be quite unable to understand it, as I was when I first saw it, and the true facts ought, so far as possible, to be before you.

The proceedings of the Board at the page mentioned give the capital stock reported by the Company as $5,971,100; the full valuation determined and equalized by the State Board as $6,659,915; the assessed, or 1/5 valuation determined and equalized by the State Board, as $1,331,983; the equalized value of the tangible property

locally assessed as $594,194, and the net capital stock assessment as
$737,789. These figures were given in the newspapers im-
136 mediately after the making of the assessment, and just before
the adjournment of the Board, and they immediately attracted my attention to some obvious mistakes in them. I at once opened correspondence by telegraph and mail with the Secretary of the Board, and asked him to examine the figures. I called his attention, among other things, to the fact that the figures given for capital stock reported by the Company and for the tangible property assessment were the figures for 1900, and not for 1901. He replied courteously and at some length to my communications, but was unable to give me any information until on December 30, 1901, when he wrote me a letter, of which I enclose you a copy. Apparently, the errors had, in the mean time, attracted the attention of one at least of the members of the capital stock committee of the Board, for the Secretary, as you will observe, refers to a letter received by him from Mr. Hirsheimer, a member of that committee, and the one who, as I always understood, gave the closest personal attention to the matter of computations, in which letter Mr. Hirsheimer explained how the result in respect to the Edison Company had been worked out. The errors are apparently clerical in character, and do not substantially affect the net result, but they produce utter confusion in respect to the method by which the result was worked out. I of course have no idea how they occurred, but I can readily see that the figures should have been substantially as given by Mr. Hirsheimer in his letter to the Secretary of the Board, although there is a further slight mistake in these figures as given to me by the Secretary.

By reference to page 1 of Exhibit "A" filed with the bill, it will
be observed that the amount of paid up capital stock reported
137 by the Company as of April 1, 1900, was $5,971,100; and
that the full valuation of the Company's tangible property as fixed by the Board of Review in that year was $2,970,970, making the assessed valuation of the tangible property $594,194. This local assessment of tangible property was increased by the State Board, in equalizing, to the sum of $653,614, as will be seen by reference to page 17 of the bill where the second capital stock assessment for 1900 is shown. This second assessment for 1900 is also shown on page 19 of the proceedings of the State Board for 1901. On page 2 of Exhibit "A" the amount of the Company's paid up capital stock as of April 1, 1901, is shown to be $6,000,000, and the full valuation of the tangible property for that year is shown to be $4,909,165, making for the assessed valuation of tangible property $981,833. By comparing these figures with the report on page 78 of the Board's proceedings for 1901, it will be seen that the report erroneously states the amount of the Company's reported capital stock by giving it as it was in 1900, and erroneously states the assessed valuation of tangible property by giving it as it was, before equalization, in 1900. Through some curious coincidence, the net result is substantially unaffected, for the net capital stock assessment is given in the report as $737,789, while it should apparently have been $737,783. In the figures sent me by the Secretary of the Board as given to him by

Mr. Hirsheimer, the full equalized capital stock valuation after subtracting the tangible property is stated as $3,668,968, but this clearly should be $3,688,916, for an obvious mistake has been made in putting down the figures after subtracting, and the net assess-
138 ment of $737,783, is 1/5 of $3,688,916. Eliminating these different mistakes, it is easy to see that the capital stock assessment of the Chicago Edison Company for 1901 was made up as follows:

60,000 shares of capital stock at $125 per share.....	$7,500,000
Indebtedness at par.....	5,508,000
Total full valuation.....	13,008,000
Deduction for portion of capital stock invested in patent licenses	725,027
Balance, being full valuation of taxable capital stock	12,282,973
Deducting 30% for equalization gives the equalized full valuation as.....	8,598,081
Full valuation of tangible property to be deducted....	4,909,165
Excess or full valuation of capital stock to be taxed	3,688,916
Assessed valuation of capital stock, being one-fifth of last mentioned amount.....	737,783

The Edison Company has not questioned this capital stock assessment for 1901, and I think that the tax upon it has already been paid.

I am sending a copy of this letter to the county attorney for his information.

Very respectfully yours,
(Signed) WM. G. BEALE.

Encl.

139 (Copy)

State Board of Equalization, State of Illinois, Springfield.

DECEMBER 30, 1901.

Mr. William G. Beale, 718 The Temple, Chicago, Illinois.

DEAR SIR: Your favor of the 27th instant was found on my desk this morning upon my return from Chicago.

Upon examination of the papers on file in the matter of the assessment of the Chicago Edison Company it is rather difficult to tell just exactly what the one-fifth or assessed value of the taxable property of the company was for the year 1901. In one memorandum statement on file it appears that the total property assessment is given as one-fifth of $4,909,165.00, which equals $981,833.00. This memo-

randum statement is not signed, neither is there anything contained in or on such statement showing by whom the same was made or for what purpose it was made.

There is on file a statement on Form No. 5, prescribed by this office to be used by corporations in making returns under the provisions of section 32 of the Revenue Laws, which was made up by the Secretary of the Board of Assessors, which shows the total tangible property of the company to be assessed:

Full value	$2,750,000.00
One-fifth value	550,000.00

So far I am unable to find any return or statement on Form No. 5, made by the company, showing the assessment of tangible property.

140 There is nothing upon the records or memorandums made by the committee to show by what process of figuring the committee arrived at the assessment made by the Board. I am in receipt of a letter, dated the 28th instant, from Mr. L. D. Hirsheimer, a member of the committee, submitting the following figures showing how the committee arrived at the assessment, which is the only thing I have, so far, been able to find that would give any information whatever, as to how the figures upon which the final conclusions were arrived at:

Capital stock, $6,000,000.00—125	$7,500,000.00
Debt	5,508,000.00
	13,008,000.00
Patents deducted	725,027.00
	12,282,973.00
	70%
Equalized value of capital stock	8,598,081.00
Less tangible property	4,909,165.00
Divided by 5	5)3,668,968.00
Net assessment fixed by the State Board of Equalization in the report of the committee adopted by the Board	$737,783.00

I give you these figures as Mr. Hirsheimer gave them to me after the adjournment of the Board, but there is not a solitary thing on file or on record showing that this process of figuring was used by the committee in coming to its final conclusions. The only record I have

141 is the report of the committee, which shows the full value of the capital stock and franchise, the value fixed by the Board for the purposes of assessment, the one-fifth value of the same,

the tangible property assessment deducted, and the net assessment of capital stock, all of which was given to you in my former letter.

Very respectfully,

(Signed) W. H. EUBANKS, *Secretary.*

142 10:00 a. m., SATURDAY, *May* 24, 1902.

Parties met pursuant to agreement.

Present: Mr. Beale, Mr. Crawford, E. S. Smith, Assistant Attorney General, Mr. Shepard, Julius A. Johnson, Esq.

Mr. JOHNSON: We desire, if the Court please, to offer some testimony this morning as to what was the appropriation, the amount and items of the appropriation made by the City of Chicago and other municipalities in the year 1900 on which this tax was extended. We desire to show and offer to show

First. Just what was the amount and what were the items of the appropriation bill passed by each municipality in the County that year on which this levy rests. Then the levying ordinance.

Then we desire to introduce and offer to introduce the warrant or certified copy thereof made by the County Clerk for the collection of this tax of 1900.

This warrant was delivered to the County Treasurer first to the Town Collectors and then to the County Treasurer or Collector for collection, and we shall offer and do offer to introduce the County Treasurer's books of a summary from the books of the County Treasurer showing the exact amount of the tax from each municipality which was collected in that year, intending thereby to show

143 that each of those municipalities had received already practically and fully more than the tax which they appropriated and levied; in some cases, they have been overpaid; in other cases they have been paid all except a trifling amount, and for that purpose

I first offer in evidence the appropriation ordinance of the City of Chicago making appropriations for its corporate purposes, and for school purposes and for library purposes, for the year 1900. This ordinance will be found on page 2809 of the Council Proceedings. It was passed on the 4th day of April, 1900, and read as follows:

Mr. SHEPARD: We object to the introduction in evidence of the ordinance just suggested and to all of the evidence that has been suggested by counsel for complainant for the purpose for which he has stated it was offered. That goes to questions simply as to whether or not this company should be compelled to pay any taxes upon the re-assessment of their property in view of the fact that they claim that the tax levied by the municipalities have been fully or partly met by the taxes paid by other property owners based upon the assessments made in 1900 for 1900.

We object to it in the first place because it is not within the scope of the order of reference, your Honor.

In the second place, because it is immaterial to this hearing or to the final hearing in this case.

The first objection it seems to me should be sufficient for this stage of the proceedings, that is in this hearing on this preliminary matter.

The order of reference reads: "That the Court finds that the
144 complainant should pay an aditional tax and it is ordered that this cause be referred to Walter M. Allen one of the Masters in Chancery of this Court for the purpose of ascertaining that preliminary payment." Said Master is directed to ascertain and determine the amount of said additional taxes upon the following basis:—"that I take to be the scope of the inquiry—"the full value of the complainant's capital stock and franchises on April 1st, 1900, shall be ascertained by capitalizing the true net earnings of the complainant, in its fiscal year covering April 1, 1900, upon a ratio or basis of six per cent. that is to say, said full value shall be taken to be 16 2/3 times said net earnings. This full value shall be equalized by deducting 30 per cent. therefrom and one-fifth of said equalized value so ascertained shall be taken as the equalized value upon which complainant should have paid taxes for the year 1900, and upon said amount or equalized assessed value so ascertained taxes at the true rate of 1900, of not to exceed 8.817 per cent. (exclusive of interest and penalties) shall be computed or extended and from the amount of the taxes so ascertained shall be subtracted the taxes already paid by complainant for the year 1900" etc.

Mr. CRAWFORD: I submit that the most proper way to deal with this situation is to allow us to go on and make our formal proof and to allow that to be admitted subject to the objection and to let the whole matter go before the Court so that the Court can determine whether or not the evidence is admissible and relevant and material. It will take but a little while to prove these things.

145 The MASTER: The Master is of the opinion that the testimony offered for the purpose for which it is offered is incompetent and irrelevant under the order in this case. I, however, do not desire to prevent counsel from having the record made of the evidence, but this is an intimation of my opinion and the effect it will have on my report. I do not anticipate that the defendants will make a cumbrous record, but that it will be merely a short one and, under the circumstances indicated, the evidence may be for the time admitted and a record made.

Mr. SHEPARD: If this testimony is to go in, we feel that we should introduce testimony as to the value of the stocks and bonds of this complainant, and that will prolong this hearing unnecessarily.

Mr. SMITH: I suppose it is understood that our objection goes to all the class of evidence Mr. Johnson stated he intended to offer, under the ruling of the Master.

The MASTER: For the purpose for which it is offered.

Mr. JOHNSON: So you need not interpose further objection in order to maintain the objections.

The heading of this ordinance reads: "An ordinance Making Appropriations for Corporate, School and Public Library Purposes for the Fiscal Year from January 1, 1900, to December 31, 1900. Be it ordained by the City Council of the City of Chicago.

SECTION 1. That the following sums, or so much thereof
146 as may be authorized by law and as may be needed be and the same are hereby appropriated for corporate purposes of the

City of Chicago, and for school and also for library purposes as herein specified, for the fiscal year commencing January 1, 1900 and ending December 31, 1900."

Then follow the various appropriations making a total for corporate purposes, the amount appropriated for taxes $6,693,251.60.

Following that there is one subdivision headed "Interest Account" and those items, there are four or five of them which will necessarily be added to make the total amount for corporate purposes. They are as follows:

For payment of interest in city indebtedness	$900,000.00
Add 4½ per cent. for loss in collection of tax	40,500.00
General Sinking Fund	150,000.00
Add 4½ per cent. for loss in collection of tax	6,750.00
River improvement sinking fund	60,000.00
Add 4½ per cent. for loss in collection of tax	2,700.00
School sinking fund	50,000.00
Add 4½ per cent. for loss in collection of tax	2,250.00
Sewerage sinking fund	104,000.00
Add 4½ per cent. for loss in collection of tax	4,680.00

Then under the heading of "The Chicago Public Library" the total appropriation is $263,397.00.

Then follows the amount of school taxes, and that is as follows:

147 New Buildings and sites	$2,500,000.00	
Parental School buildings	200,000.00	
Add loss and cost of collection	160,000.00	
Making a total of		$2,860,000.00

for building purposes.

Then under the heading "Educational purposes,"

Educational purposes	$7,455,000.00	
Add loss and cost of collection	445,000.00	
		7,900,000.00
Estimated revenue from other sources		750,000.00
Making a total of		$7,150,000.00

Indebtedness.

Bonds maturing in 1900	$59,500.00
Interest due in 1900	32,800.00
Bonds maturing in 1901	36,800.00
Interest due in 1901	29,200.00
	$158,300.00
Add loss and cost of collection	7,700.00
Due in settlement with trustees of that portion of Austin un-annexed on division of property, as per report to be made to City Council	29,206.44
Add loss and cost of collection	1,406.32
Making Total school tax appropriation	10,206,666.76

I also offer in evidence the following ordinance passed by the City Council of the City of Chicago on the 8th day of October, 1900, and found on page 1158 of the Council Reports.

148 "The following is the ordinance as passed:

Be it ordained by the City Council of the City of Chicago,

SECTION 1. That the following reductions be made in the ordinance making appropriations for corporate, school and public library purposes for the fiscal year from January 1, 1900, to December 31, 1900, and passed April 4, 1900, and that the heads of departments shall furnish to the City Comptroller at the earliest possible moment the details of the following amounts, showing the specific items to be reduced:" "From Fund for Corporate purposes" a total of $1,647,-500.00. "This ordinance shall be in force from and after its passage."

I also offer in evidence the levying ordinance of the City of Chicago for the year 1900, found on page 49 of City Council Proceedings, passed on the 23rd day of April, 1900, reciting "That the following sums, or so much thereof as may be authorized by law and as may be needed, be and the same are hereby appropriated for corporate purposes of the City of Chicago, and for school and also for library purposes as hereinafter specified, for the fiscal year commencing January 1, 1900 and ending December 31, 1900."

I will not repeat the items, they are the same as in the appropriation ordinance of April 4.

I now offer in evidence the appropriation ordinance passed for the year 1900 by the County of Cook at its meeting on January 23, 1900, and found on page 157 of its official records for the year 1899–1900 the last clause of which reads as follows: "Total amount to be appropriated." and under that, "Total to be realized by

149 taxation as per resolution $2,481,348.44."

I offer in evidence a certified copy of the tax levy for the year 1900 of the South Park Commissioners in and by which they levy the sum of $611,056.00.

(Said certified copy is in words and figures as follows, to-wit:)

An Ordinance Concerning the Tax Levy for the Current Year.

Be it ordained by the South Park Commissioners,

SECTION 1. That the South Park Commissioners hereby specified the sum of three hundred thousand ($300,000) dollars which this Board estimates as necessary for the payment of the interest on the bonds issued by this Board prior to June 26th, 1885, and for the payment of the principal of such said bonds as are required to be paid during the current year, and that which in addition thereto will be required for the improvement, Maintenance and government of the South Park during the current year.

SECTION 2. That the South Park Commissioners in addition to the sum mentioned in the preceding Section hereby levied a tax of forty thousand ($40,000) dollars upon the property within its jurisdiction to pay the interest as it falls due on the bonds issued under and in pursuance of an "Act" entitled "An Act in Relation to the World's

Columbian Exposition" approved August 5th, 1890 and also to pay and discharge that portion of the principal of said bonds required to be paid during the current year, and direct the same to be collected in the manner provid- for in the Collection of other park taxes.

150 SECTION 3. That the South Park Commissioners in addition to the sum mentioned in the preceding Sections, hereby levies a tax of three hundred eleven thousand and fifty six ($311,056,000) dollars upon the taxable property embraced in its park district under and in pursuance of an act entitled An Act to Enable Park Commissioners to Maintain and Govern Parks, Boulevards, Driveways, Promenades and Pleasure Grounds under their control Approved April 21, 1899, and ordains and certifies that said amount in addition to the sums mentioned in the preceding Sections, is necessary for the proper improvement governance and maintenance of the Park property under its control.

SECTION 4. That the sum of six hundred fifty-one thousand and fifty six ($651,056) dollars specified to be collected as taxes for the current year be, and the same is hereby levied and assessed upon the taxable property of the town of South Chicago, Hyde Park and Lake, in the County of Cook and State of Illinois, according to the Valuation of the same as made for the purpose of State and County taxations.

SECTION 5. That the South Park Commissioners hereby certifies to the County Clerk of said County the several amounts above specified aggregating six hundred fifty one thousand and fifty six ($651,056) dollars and the said County Clerk is required to apportion and extend the said sum of six hundred fifty one thousand and fifty six ($651,056) dollars upon the taxable property in the towns of

151 South Chicago, Hyde Park and Lake in said County of Cook in the next general tax Warrants for the collection of the State and County taxes in said several towns in the manner provided by law.

SECTION 6. That the Secretary is hereby directed to transmit to the County Clerk of said Cook County on or before the second Tuesday of August, A. D. 1900, a copy of this ordinance duly certified by said Secretary as the estimate and certificate required by law.

STATE OF ILLINOIS, *County of Cook, ss:*

South Park Commissioners.

I, Edward G. Shumway, Secretary of the South Park Commissioners and Custodian of its records and files, do certify that the foregoing is a true copy of an ordinance adopted by the South Park Commissioners on the 9th day of May, 1900.

In Testimony Whereof, I have hereunto set my hand and the seal of said South Park Commissioners this seventh day of June, A. D. 1900.

EDWARD G. SHUMWAY,

[SEAL.] *Secretary of the South Park Commissioners*

(Endorsed on the back as follows:)

Filed Jun. 14, 1900, Philip Knopf, County Clerk.

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152 STATE OF ILLINOIS, *County of Cook, ss:*

I, Philip Knopf, Clerk of the County Court of Cook County, in the State aforesaid, de hereby certify that the attached statements are a true and correct copy of the Tax Levies for the South Park, West Park, West Chicago Bonded Indebtedness, Lincoln Park, North Chicago and Lincoln Park, Lake View for the year A. D. 1900, all of which appears from the records and files in my office.

In Witness Whereof, I have hereunto set my hand and affixed the seal of said County Court, at my office, in the City of Chicago, in said County, this 17th day of May, A. D. 1902.

PHILIP KNOPF,
Clerk of the County Court.

[SEAL.]

Mr. JOHNSON: I offer in evidence the resolution of the Town of West Chicago, dated the 27th day of July, 1900, levying the sum of $60,000.00 for its bonded debt.

I offer in evidence certified copy of the resolution of the Supervisor of the town of Lake View levying the sum of $60,000.00 for the improvement, maintenance and government of Lincoln Park for the year 1900. This ordinance is on October 11, 1900.

Another ordinance of the Town of North Chicago dated October 10th for levying the following items for the maintenance of Lincoln Park. They are as follows:

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For the maintenance and improvement of the Park, the sum of	152,250.00
For the payment of interest on the Lake Shore Protection bonds, the sum of	25,000.00
For sinking fund, for the payment of said Lake Shore Prorection bonds, the sum of	25,000.00
For cost of collection, the sum of	1,000.00
For loss of collection the further sum of	2,000.00
For deficiency on former collections, losses the further sum of	2,323.44

I also introduce in evidence an ordinance of the West Chicago Park Commissioners dated the 18th day of July, 1900, levying certain rates per cent, under various laws, all of which are set out in detail, amounting to 11½ mills on the property in the West Town of Chicago for that year.

(Said documents are in words and figures as follows to-wit:)

To Philip Knopf, County Clerk of Cook County, Illinois:

We, the Corporate Authorities of the Town of West Chicago in the County of Cook and State of Illinois, do hereby certify to you that the following amount of money to be raised by taxation is required for the purpose of meeting the bonded indebtedness of the said Town of West Chicago for the ensuing year.

For West Chicago bonded indebtedness..... $60,000.00

In Witness whereof we hereunto set our hands and caused the seal of said Town to be affixed hereto, this twenty-seventh day of July, 1900.

JOHN J. McLAUGHLIN
Supervisor of the Town of West Chicago.

154 EDWARD B. WARWICK,
Clerk of the Town of West Chicago.

[SEAL.] JOSEPH J. KLEIN,
Assessor of the Town of West Chicago.

(Endorsed on the back as follows:)
Filed Dec. 11, 1900, Philip Knopf, County Clerk.

Town of Lake View, October 11, 1900.—I, Henry Best, Supervisor of the *Bown* of Lake View in the County of Cook and State of Illinois, pursuant to law, do hereby certify that the amount of money to be raised by taxation on property in said town of Lake View in said County and State, on the assessment for 1900, for the purpose of paying any debt contracted by the Commissioner of Lincoln Park which may fall due during the next year and for the improvement, maintenance and government of said *part* during the next succeeding year, agreeable to an act of the General Assembly of the State of Illinois entitled "An Act to fix the boundaries of Lincoln Park and provide for its improvement" approved April 19, 1869, and Amendments thereto, is sixty thousand ($60,000.00) dollars.

HENRY BEST,
Supervisor Town of Lake View.

I concur in the above levy.

STEPHEN A. BERTRAND,
Supervisor Town of North Chicago.

(Endorsed on the back as follows:)
Filed October 10th, 1900, Philip Knopf, County Clerk.

155 TOWN OF NORTH CHICAGO, *October* 10, 1900.

I, Vincent H. Perkins, Supervisor of the town of North Chicago in the County of Cook and State of Illinois, pursuant to law, do hereby certify that the amount of money to be raised by taxation on property in said town of North Chicago in said County and State on the assessment for 1900, for the purpose of paying any debt contracted by the Commissioners of Lincoln Park, which may fall due during the next year and for the improvement, maintenance and government of said Park during the next succeeding year agreeable to an act of the General Assembly of the State of Illinois, entitled An Act to fix the boundaries of Lincoln Park and provide for its improvement" "Approved April 19, 1869, and Amendments thereto, is one hundred and fifty two thousand two hundred and fifty ($152,250.00) dollars.

And I further certify that a further sum of twenty-five thousand dollars ($25,000.00) is to be raised on said property in said town, in said county and State for the payment of interest on Shore Protection Bonds.

And I further certify that a further sum of twenty five thousand dollars ($25,000.00) is to be raised on said property in said town in said County and State for a Sinking Fund for the payment of said Shore Prorection Bonds.

And I further certify that a further sum of one thousand dollars ($1000.00) shall be raised on said property in said town in said County and State for cost of Collection and a further sum of two thousand dollars ($2,000.00) for loss on Collection and a
156 further sum of two thousand three hundred and twenty three dollars and forty four cents ($2,323.44) for deficiency on former collection loss.

VINCENT H. PERKINS,
Supervisor Town of North Chicago.

(Endorsed on the back as follows:)
Filed October 10th, A. D. 1900, Philip Knopf, County Clerk.

Whereas, It is necessary that all the taxes now allowed by law for the purpose of governing, maintaining and improving the parks and boulevards now under the control and management of the West Chicago Park Commissioners and also for the purpose of paying all other necessary and incidental expenses incurred and to be incurred by said Commissioners in and about the same during the *nixed* succeeding year, be levied; therefore, be it

Resolved by the West Chicago Park Commissioners, That there should be duly levied by the proper authorities, lawfully constituted for that purpose and under the Acts of the General Assembly of the State of Illinois, particularly mentioned in the certificate hereto attached and marked Exhibit "A" a tax of 11½ mills on each dollars worth of property in the town of West Chicago according to the valuation of such property as made for the purpose of State and County Taxes, for the purpose of enabling said West Chicago Park Commissioners to pay for the government, maintenance and improvement of the several parks and boulevards now under the control and management of such Park Commissioners and for the purpose of enabling said Park Commissioners to pay all
157 other necessary and incidental expenses incurred, and to be incurred in and about and incident to the government, maintenance management and control of the several parks and boulevards now under the management and control of the *several parks and boulevards now under the management and control of* said Park Commissioners, and also for paying the interest on all bonds and other indebtedness heretofore lawfully incurred and hereafter to be lawfully incurred by said Park Commissioners pursuant to the laws now in force in this state.

Resolved: Further by the West Chicago Park Commissioners, That the President and Secretary thereof immediately transmit to

the Assessor, Supervisor and clerk of the town of West Chicago and to the County Clerk of Cook County, under the seal of this Board, a copy of the foregoing resolutions and the certificate thereto attached.

EXHIBIT "A."

Certificate.

The West Chicago Park Commissioners hereby certify That the several Acts of the General Assembly authorizing the tax estimate by the West Chicago Park Commissioners necessary to be levied for the next ensuing year upon each dollar's worth of the property subject to taxation in the Town of West Chicago, according to the valuation thereof for taxation for State and County purposes are as follows namely

First: ½ mill—"An Act to amend the charter of the city of Chicago, to create a Board of Park Commissioners and authorize
158 a tax in the town of West Chicago, and for other purposes," approved and in force February 27, 1869.

Second. 2½ mills—Also "An Act in regard to the completion, improvement and management of public parks and boulevards and to provide a more efficient remedy for the collection of delinquent assessments" approved May 2, 1873, and amended by an Act approved May 31, 1879, and in force July 1, 1879.

Third. 1 mill—Also "An Act to enable Park Commissioners to improve, govern and maintain the parks and boulevards under their control," approved June 6, 1885, and in force July 1, 1885.

Fourth. 1½ mills—Also "An Act to authorize the corporate authorities of towns to issue bonds for the completion and improvement of public parks and boulevards, and to provide a tax for the payment of the same," approved June 12, 1891, and in force July 1, 1891.

Fifth. 1 mill—Also "An Act to enable Park Commissioners to maintain and govern parks and boulevards under their control" approved June 17, 1893, and in force July 1, 1893.

Sixth. 1½ mills—Also "An Act to authorize the corporate authorities of towns to issue bonds for the completion and improvement of parks and boulevards, and to provide a tax for the payment of the same," approved June 21, 1895, and in force July 1, 1895.

Seventh. 2 mills—Also "An Act to enable Park Commissioners to maintain and govern the parks and boulevards under their
159 control" approved June 17, 1895, and in force July 1, 1895.

Eighth. 1½ mills—Also "An Act to authorize the corporate authorities of towns to issue bonds for the completion and improvement of public parks and boulevards and to provide a tax for the payment of the same," approved June 9, 1897 and in force July 1, 1897.

On motion of Commissioner Pavlicek seconded by Commissioner Kopf, that the foregoing resolution be adopted the ayes and noes were called as follows:

Commissioner Kopf aye.
" Lichtenberger aye.
" Norden aye.
" Pavlicek aye.
President Suddard aye.
5 votes aye: declared carried.
Absent: Commissioner- Bloxet and Graham.
Approved:

J. W. SUDDARD, *President.*

STATE OF ILLINOIS, *County of Cook, ss:*

I, Ernest G. Schubert, Secretary for the West Chicago Park Commissioners, do hereby certify that the above and foregoing is a true and correct copy of a resolution adopted by the Board of West Chicago Park Commissioners at an adjourned regular meeting, held Wednesday, July 18, 1900.

In Witness Whereof, I hereun- subscribe my name and affix the Corporate Seal of said West Chicago Park Commissioners
160 this the 20th day of July, A. D. 1900.

E. G. SCHUBERT, *Secretary.*

Filed July 28, 1900,

PHILIP KNOPF, *County Clerk.*

STATE OF ILLINOIS, *County of Cook, ss:*

I, Philip Knopf, Clerk of the County Court of Cook County, in the State aforesaid, do hereby certify that the attached statements are a true and correct copy of the Tax levies for the South Park, West Park, West Chicago Bonded Indebtedness, Lincoln Park, North Chicago and Lincoln Park, Lake View for the year A. D. 1900, all of which appears from the records and files in my office.

In Witness Whereof, I have hereunto set my hand and affixed the seal of said County Court, at my office, in the City of Chicago, in said County, this 17th day of May, A. D. 1902.

PHILIP KNOPF,
Clerk of the County Court.

WILLIAM R. BURCKY called as a witness on behalf of the complainant, being first duly sworn, was examined in chief by Mr. Johnson and testified as follows:

Q. Please state your name, residence and occupation?

A. William R. Burcky, Chicago, bookkeeper in the County Treasurer's office.

Q. How long have you been employed in the County Treasurer's office?

A. About twenty years.

Q. Mr. Burcky, have you made up from the County Treasurer's books for the year 1900 a statement of the total amounts ex-
161 tended on the warrants for each year and the total amounts collected under each warr-nt for each municipality, and a

statement showing the amount uncollected in favor of each municipality from the general tax levy of that year?

A. I have the tax warrant of the year 1900 tax, yes, sir.

Q. If you have made up from the County Treasurer's books and brought with you such a statement, you may produce the same. First, I will ask you to state what the amount of taxes is, extended on the warrant for the year 1900 in favor of the City of Chicago.

Mr. SHEPARD: That is objected to as incompetent and immaterial for the reasons already stated.

Q. Mr. Burcky, I will ask you if you have prepared in convenient form a statement of the amount of State, County, Chicago City, Chicago School, Chicago Library, South Park, Lincoln Park, Lake Shore Protection Fund, West Park, Boulevard and Park, and Sanitary District taxes extended on such Warrants and the amounts uncollected?

A. Yes, sir.

Mr. JOHNSON: Now, I offer to prove that the books show the following: and I also offer in evidence the statement prepared by Mr. Burcky, as follows:

162

	Amount on warrant for the year 1900.	Uncollected amounts.	Amount collected by town and county collectors.
State Tax.....	$1,552,346.12	53,302.22	1,499,043.90
County Tax	2,456,064.89	83,807.89	2,372,257.00
Chicago City Tax.....	6,953,716.00	262,160.60	6,691,555.40
Chicago School Tax....	10,026,965.82	333,175.73	9,693,790.09
Chicago Library Tax...	271,308.00	9,764.71	261,543.29
South Park Tax..... .	662,187 01	23,498.82	638,688.19
Lincoln Park Tax.....	223,049.69	8,773.86	214,275.83
Lake Shore Pro Fund Tax..	51,097.22	1,922.08	49,175.14
West Park Tax.....	641,687.87	13,176.47	628,511.40
Boulevard & Park Tax.....	29,833.43	665.82	29,167.61
Sanitary District Tax..	1,374,047.88	59,562.67	1,314,485.21
Total.....	$24,242,303.93	$849,810.87	$23,392,493.06

Mr. JOHNSON: I offer to prove by certified copy of the objection of the Title Guarantee & Trust Company, a tax payer of the City of Chicago, made in the County Court of Cook County, in the matter of the application of Samuel B. Raymond, County Treasurer and *ex-officio* County Collector of Cook County, Illinois, for judgment of sale for delinquent taxes for the year 1900 and prior years, with the judgment of the court thereon, the invalidity of 13.05 per cent. of the corporate tax of said city for said year.

Mr. SMITH: I think we should make a further specific objection

to that, that it is not in the record in this case or between any parties to this case.

163 Mr. JOHNSON: Now, it is to be understood that in addition to all the evidence having been excluded, I offer to prove the various ordinances and the testimony figured out on Mr. Burcky's slip which has been disallowed——

Mr. SHEPARD: If your Honors please, just to have this record straight, it may be all right now, I understand the ruling of the Masters to be that the evidence sought to be introduced here upon this subject matter this morning is excluded, and the objection to the introduction of that evidence is sustained.

The MASTER: In effect that is the ruling of the Masters.

Mr. SHEPARD: And their offer to prove these various things suggested is disallowed.

Mr. SMITH: As I understand, that is not exactly it, I understand Mr. Johnson has offered in evidence what he has read here; we object to it, and the Masters sustain the objection.

The MASTER: Yes, so far as he has offered in evidence the objection is sustained, and in so far as he has offered to prove certain things his offer is also disallowed.

Mr. CRAWFORD: Now, I ask that the Master shall refer that question to the Court or direct that the evidence, the offer be returned with their reports so that the equity that is before the Master, the proposition, and rejected may be presented to the court exactly as it was presented to the Master. In other words, we have the right I assume to ask the opinion of the court, and the Masters ought to include the evidence, not simply the objections to it, and if

164 not, I shall ask the Masters to suspend this proceeding now and refer the matter to the Court.

Mr. SHEPARD: I object to any such proceedings at this late day.

The MASTER: It will go to the court just as it has been offered.

Mr. JOHNSON: I would like to ask Mr. Burcky another

165 question.

WILLIAM R. BURCKY, recalled for further examination by Mr. Johnson.

Q. Mr. Burcky, do these figures of the amount extended on the warrant for the year 1900 include any tax, any item except the revenue for that year?

A. They include whatever back taxes have been brought forward from other years, and that would be an amount in the levy.

Q. So the items of back taxes would be a comparatively small one in each case?

A. I think so.

Q. And in the levy you speak of, would there be any excess?

A. In making the extension upon so many different pieces, there would be of course a fractional amount.

Q. It arises from the extension of fractions?

A. Yes, sir.

Q. These amounts which you have on here under the head of

"Amount of Warrant for year 1900" those are the amounts which stand on the warrants themselves?

A. Including the back taxes brought forward.

Mr. JOHNSON: I also offer to prove by a certified copy from the County Clerk of Cook County that the exact amount of taxes on the warrant in favor of each municipality for the year 1900, not including back taxes, is as follows:

166 *Taxes Extended for* 1900.

County.	Dollars.	Cts.
County	2,431,021	95
City of Chicago	6,889,054	40
Chicago School	9,986,580	94
Chicago Public Library	268,291	12
Sanitary District	1,347,566	29
South Park	656,450	68
Lincoln Park (Lake View)	60,270	98
Lincoln Park (North Chicago)	160,037	76
Lake Shore Protection Fund (No. Chic.)	50,853	01
West Park	639,577	27
Boulevard and Park	29,681	81
Town Bonds	64,601	34

STATE OF ILLINOIS, *County of Cook, ss:*

I, Philip Knopf, Clerk of the County Court of Cook County, in the State aforesaid, do hereby certify that the attached statement of the total amount of Taxes Extended on the General Warrants for the year A. D. 1900 for the several purposes mentioned is true and correct all of which appears from the records and files in my office.

167 In Witness Whereof, I have hereunto set my hand and affixed the seal of said County Court, at my office in the City of Chicago, in said County, this 17th day of May, A. D. 1902.

(Signed) PHILIP KNOPF,
[SEAL.] *Clerk of the County Court.*

168 The MASTER: The intention of the Master was simply that counsel should offer to prove, and that that offer should be dealt with by the Master. There was a departure from that method of procedure so that you could get right along on both the offers to prove and the actual proof.

Mr. JOHNSON: The Master understands I offer to prove each one of these ordinances I have offered in evidence. Of course I don't want any of them left out on account of any misunderstanding.

The MASTER: They are all in.

Mr. CRAWFORD: We shall request the Master in his report to fully embrace the different items of evidence that were tendered and rejected, and also the offers to prove that were rejected; I think in order

to get it into the record in proper shape there should be a formal offer to prove.

Mr. SHEPARD: I think the record shows you have both offered to prove and we have objected.

Mr. CRAWFORD: Not the whole detailed proposition which was rejected; I think we can get it in the record in proper shape.

Mr. SMITH: You might offer to prove a certain thing and when you offered your evidence it might prove an entirely different thing.

Mr. CRAWFORD: It might but it won't, so you might try us.

169 Mr. JOHNSON: That is all I have got to offer.

170 (Said certified copy of the objection of the Title Guarantee and Trust Company is in words and figures as follows to-wit:)

UNITED STATES OF AMERICA.

STATE OF ILLINOIS, *County of Cook, ss:*

Pleas before Honorable Richard S. Farrand, County Judge of Lee County, presiding as Judge of the County Court of Cook County at the request and in the absence of the Honorable Orrin N. Carter, sole presiding Judge of the County Court of Cook County, in the State of Illinois, at a regular term of said County Court of Cook County begun and holden at the Court House, in the City of Chicago, in said County and State, on the Second Monday, being the 8th day of July, in the year of our Lord one thousand nine hundred and one, and of the Independence of the United States of America the one hundred and twenty-sixth.

Present: The Honorable Richard S. Farrand, Acting Judge of the County Court of Cook County. Ernest J. Magerstadt, Sheriff of Cook County.

Attest:

PHILIP KNOP-, *Clerk.*

Be it remembered that heretofore, to-wit: on the 10th day of July in the year of our Lord one thousand nine hundred and one the same one being one of the days of the July Term of the County Court of Cook County, the following objections were filed

171 with the clerk of said Court in words and figures as follows to-wit:

STATE OF ILLINOIS, *County of Cook, ss:*

In the County Court Thereof.

Objection No. —.

In the Matter of the Application of SAMUEL B. RAYMOND, County Treasurer and *ex-officio* County Collector of Cook County, Illinois, for judgment of Sale for Delinquent Taxes for the Year 1900 and Prior Years.

Now comes Title Guarantee & Trust Company who is the owner of, and interested in, the real property described in the Schedule

hereto attached and made part hereof, by J. D. Adair and Edwin S. Philpot, his attorneys and objects to the rendition of judgment as herein applied for against said premises, for the taxes levied thereon, for the said year, and for cause of objection alleges:

1. That the description of said premises as set forth in the judgment sale, redemption and forfeiture record, and the advertised delinquent list upon which this application for judgment of sale is made, is so defective as to render the assessment thereof, for the purpose of taxation for the year 1900, null and void.

172 2. That said description, as set forth, is so defective as to render the levy of the taxes extended against said premises for the year 1900 null and void.

3. The said description of said lands, as set forth in the judgment sale, redemption and forfeiture record aforesaid, is on this application insufficient to sustain a judgment of sale as applied for.

4. The said description of said land, as contained in the advertised list of delinquents is, on this application insufficient to sustain a judgment of sale as applied for.

5. A plat of said lands purporting to have been filed for record in the recorder's office of Cook County, Illinois, as document number — in Book 164 maps, page 27, entitled Subdivision by the Assessor of South Division of Chicago of Lots 7 & 8 and E. ½ Lot 6. B. 40, Original Town of Chicago is void in this

(*a*) It does not particularly describe and set forth the lots or parcels of land surveyed, as required by the statute then in force.

(*b*) The location of the lots into which said lots were subdivided is not set forth in said plat as required by the statute then in force.

(*c*) No description of the tract or tracts, lot or lots of land out of which said lots in said Assessor's plat were made is given in said plat, as required by the statute then in force.

(*d*) The quantity of land in each of the lots attempted to be made by said assessor, and particularly as to lots — is not given, as required by the statute then in force.

173 (*e.*) The said plat was not certified by the County Surveyor, as required by the statute then in force.

(*f.*) The said assessor was without legal authority to make said survey and plat because said plat does not show affirmatively that said assessor included in his survey and plat only parcels of land each of which embraced less than one-sixteenth of a section as required by the statute then in force.

(*g.*) The said plat is in other respects illegal and insufficient as a platting of said lands for the purposes of taxation.

6. The property has no legal existence for the purposes of taxation.

7. No lien for taxes can attach as against said lands as there described, because they cannot be located and found.

8. The tax levy ordinance passed by the Common Council of the city of Chicago on the 23rd of April A. D. 1900, provides for the levying of taxes for corporate purposes, for the year 1900, in excess of two per cent. (exclusive of the amount levied for the payment of bonded indebtedness and interest thereon) upon the aggregate valua-

tion of all the property within the city of Chicago, subject to taxation therein as the same was equalized for State and County taxes for the preceding year.

9. The County Clerk extended the taxes levied for corporate purposes of the City of Chicago for the year 1900 upon the premises herein objected for, at a rate in excess of two per cent. (exclusive of the amount levied for the payment of bonded indebtedness
173½ and interest thereon), upon the aggregate valuation of all property within the City of Chicago subject to taxation therein as the same was equalized for State and County taxes for the preceding year.

10. The appropriations made by the Common Council by ordinance passed April 4, 1900, provide for the application of money to be raised under the tax levy ordinance aforesaid, to the payment of indebtedness incurred or to be incurred by the City of Chicago, in excess of five per cent. of the value of the taxable property in the City of Chicago, as ascertained by the last assessment for State and County purposes, and the taxes as levied upon the premises herein objected for were extended to include such indebtedness.

11. The Common Council by ordinance passed April 4th, 1900, appropriated money to the payment of indebtedness unlawfully incurred by the City of Chicago, for the payment of which indebtedness the City has levied, and the County Clerk extended a tax upon the premises herein objected for.

12. The appropriations by the City of Chicago by ordinance passed April 4, 1900, and the tax levy based thereon, are in respect to the appropriations of money to pay, and the levy of the tax to raise said money to pay said indebtedness so unlawfully incurred by said
174 City illegally appropriated, and the said taxes are illegally levied upon the premises herein objected for.

13. The appropriations by the City of Chicago by ordinance passed April 4, 1900, and the tax levy based thereon, provide for the payment of unlawful indebtedness and the unlawful use of money, in this that the appropriations were made for unpaid bills of prior years, for money not to be applied to lawful corporate purposes, for money to pay interest in excess of the interest payable upon the lawful interest bearing indebtedness of the City of Chicago, and the tax to raise the money to pay said appropriations, was illegally levied upon the premises objected for.

14. The appropriations made by the Common Council of the City of Chicago by ordinance passed April 4th, 1900, and the tax levy based thereon, exceed the amount which could be lawfully appropriated and levied, upon the property subject to taxation in the City of Chicago, as the same was assessed and equalized for State and County purposes for the year 1900, and the said tax as levied upon the premises objected for is illegal and void.

15. The taxes levied upon the premises in question for the corporate purposes of the City of Chicago for the year 1900, are in other respects illegal and void.

16. The estimate of the amount of money required by School pur-

poses, for the year 1900, as passed and certified by the Board
175 of Education of the City of Chicago, to the finance Committee of the Common Council of said City, is illegal and void.

17. The appropriation ordinance passed April 4th, 1900, by the Common Council of the City of Chicago, and the levy of the Tax to raise the money to pay said appropriations, are in respect to the appropriations for the School Tax Fund and the levy of the taxes therefor, illegal and void in this.

(*a.*) The amount appropriated for building purposes, and the tax levied therefor, exceed two per cent., upon all the taxable property in the City of Chicago, as ascertained by the assessment for State and County taxes for the year 1900.

(*b.*) The amount appropriated for educational purposes, and the tax levied therefor, exceed three per cent. upon all the taxable property in the City of Chicago, as ascertained by the assessment for State and County taxes for the year 1900.

(*c.*) The amount appropriated for the School Sinking Fund, exceeds the amount necessary for said fund and lawfully authorized therefor.

(*d.*) The appropriation for building purposes, contains items belonging to educational purposes, and the appropriation for educational purposes contains items for building purposes, and both are illegal and void, and the tax levied to pay the same is illegal and void.

18. The appropriations for school purposes for the year 1900, made by the Common Council of the City of Chicago is in other respects uncertain, illegal and void.

19. The appropriations by the Common Council by ordinance passed April 4th, 1900, for the general sinking fund, are
176 largely in excess of the amount required, and lawfully authorized by law, for that purpose.

20. The valuation of the objector's premises for taxation for the year 1900, is illegal and void.

21. The objector herein hereby offers to pay, not waiving his right to an appeal or writ of error, any part of the taxes aforesaid, which may be found by the Court to have been legally assessed and levied.

TITLE GUARANTEE & TRUST COMPANY,
By J. D. ADAIR & E. S. PHILPOT,
Attorneys for Objector.

Schedule of Property Objected For.

Title & Guarantee & Trust Company, Objector.

The South six (6) inches of the East one hundred and eleven and one half (111½) feet of sub-lot Two (2) and all of sub-lot three (3) in Assessor's Division of the East half of lot six (6) and all of lots seven (7) and eight (8) in block forty (40), Original Town of Chicago.

177 And afterwards, to-wit: on the 7th day of August, A. D. 1901, the following among other proceedings were had by and before said Court and entered of record, to-wit:

STATE OF ILLINOIS, *County of Cook, ss:*

General Taxes.

In the County Court Thereof.

Objection No. 75.

In the Matter of the Application of S. B. RAYMOND, County Treasurer and *ex-officio* Collector of Cook County, Illinois, for Judgment of Sale for Delinquent Taxes, &c., for 1900 and prior Years.

On this day, being one of the days of the July Term, 1901, of this Court, the objections of Title Guarantee & Trust Co., to the application for judgment of sale for delinquent taxes for the year 1900 coming on to be heard, the Court after hearing the evidence and the arguments of counsel, and being fully advised in the premises, finds that the plat entitled:

"Subdivison by the Assessor of South Division of Chicago of lots 7 and 8 and east half of lot 6 Block 40 Original Town of Chicago," recorded Sept. 19, 1866, in Book 164 of Maps page 27, offered in evidence herein does not comply with Sections 52 and 53 178 of the Act of Feb'y 12, 1853, nor does said plat comply with Sections 17, 18, 19, 20 and 24 of the Revised Statutes of 1845.

And the Court further finds from the evidence that the objector is estopped to deny the validity of said Assessor's Plat.

And the Court further finds, that the tax levy ordinance of the City of Chicago, passed April 23rd, 1900, as to the following items is invalid.

Contingent Fund.

For contingent and other expenses, for corporate purposes not otherwise hereinafter expressly provided for, including injury claims.....	$40,000.00

Contingent Fund Finance Committee.

For payment of petty injury and damage claims, refunds and other contingent expenses ordered, by Finance Committee.....	5,000.00

Civil Service Commission.

For payment of salaries, stationary and sundry expenses, including unpaid bills of 1897, 1898 and 1899	38,000.00

Payment of 1899 Bills.

For unpaid bills of 1899 Department of Electricity... 28,074.34

City Engineer's Office.

For payment of one year's salary to W. D. Hotchkiss, Ass't Engineer, during period of service, May 1, 1898, to May 1, 1899, in United States Army, as per ordinance of City Council, Oct. 17, 1898, page 793 of Proceedings 1,620.00

For restoration and repair of streets (including unpaid bills of 1899.)..... 1,433.2–

179 Public Buildings.

For unpaid bills of 1898..... 7,723.58

Seventy-third Street Pumping Station.

Horse Feed for 1899..... 1,980.00

For miscellaneous work performed for Board of Local Improvements, other departments and outside depositors. This amount to be in addition to any appropriation made for labor, teaming, material, horse hire, and all necessary expenses for sewer repair work, Payments on account actually collected from depositors and taken up as miscellaneous receipts in the general fund..... 70,000.00

Election Expense.

For the payment of judges and clerks having served at the April, 1899, elections..... 94,245.00

Fire Department.

For unpaid bills of 1899..... 18,720.13

House of Correction.

For unpaid bills of 1899..... 28,032.50

Judgment Account.

For payment of judgments and costs against the City.. 50,000.00

Legal Expense.

City Attorney's unpaid bills, 1889..... 5,857.00

Department of Police.

For deficiency in miscellaneous appropriations of 1899 ..... 53,153.75

For deficiency in miscellaneous appropriations of 1898 ..... 20,000.00

Sundry Claims.

For payment of unpaid bills of 1898 and claims allowed by City Council for which no appropriation has been made as per schedule certified to
180 City Comptroller by finance committee, and for payment of the claim of J. J. Sullivan for sidewalk construction in the sum of $591.88... 29,138.32

That the following item is valid:

Bridge Construction.

For construction of new bridges to replace those at Ninety-fifth street, Clybourn Place, North Avenue, Division street over Canal, Division street over North Branch, South Western Avenue, and Thirty-seven-street (Bridge is to be built at an approximate cost of $200,000.00 each) of which sum only $850,000.00 shall be expended during the year 1900, $1,250,000.00 ..... 850,000.00
Less amount of appropriation not to be expended during 1900 ..... 400,000.00

And that the item for interest in city indebtedness to the extent of $636,469.00 is valid; and as to the amount of $304,031, is invalid, and that such invalid items amount to $13.05 per cent. of said taxes levied, and that the objections are sustained to the said City tax to the extent of 13.05% thereof and overruled as to the remainder.

And the Court further finds that the levy by the City of Chicago for the tax for the year 1900 for school purposes is a valid levy, and the taxes are collectible as levied.

It is therefore Ordered, adjudged and decreed by the Court, that all objections based upon said Assessor's plat be and the same are hereby overruled.

That the objections to the City taxes aforesaid, be and the same are hereby sustained to the extent of 13.05 per cent. of said taxes, and overruled as to the remainder and that all objections to
181 the school tax aforesaid be and the same are hereby overruled.

It is further ordered that judgments of sale are hereby levied against said premises in favor of the People of the State of Illinois for all of said taxes, except said City tax, and as to said City tax judgment be and the same is hereby entered for 86 95/100 per cent. thereof in favor of the People of the State of Illinois, with penalties and costs severally due hereon for the months of May, June and July, 1900.

And it is ordered by the Court that said premises or so much thereof as shall be sufficient to satisfy the amount of taxes, penalties and costs annexed to them severally be sold as the law directs.

Whereupon the objector excepted to the finding of the Court and prayed an appeal from said findings to the Supreme Court of the

State of Illinois, which appeal is granted upon the objectors filing a bond in the sum of $250 to be approved by the Clerk of this court and bill of exceptions within 30 days, and depositing the amount of said taxes &c. as the law directs.

182 STATE OF ILLINOIS, *County of Cook, ss:*

I, Philip Knopf, Clerk of the County Court of Cook County in the State aforesaid, and keeper of the records and files thereof, do hereby certify that the foregoing is a true and correct copy of Certain objections of Title Guarantee and Trust Company filed with the Clerk of said Court on the 10th day of July, A. D. 1901, and a certain order entered of record August 7th, A. D. 1901, In the matter of the application Samuel B. Raymond, County Treasurer and *Ex-officio* Collector of Cook County, for Judgment of sale for Delinquent Taxes for 1900 and prior thereto. Objections General No. 75. all of which appears from the records and files in my office.

In Witness Whereof, I have hereunto set my hand and affixed the seal of said County Court, at my office in the City of Chicago, in said County, this 17th day of May, A. D. 1902.

PHILIP KNOPF,
[SEAL.] *Clerk of the County Court.*

Mr. JOHNSON: That is all I have got to offer.

(Endorsed:) Filed June 9, 1902, Marshall E. Sampsell, Clerk.

183 And on to-wit: the nineteenth day of May, 1906, came the City of Chicago, by its solicitors, Mr. James Hamilton Lewis and Mr. David K. Tone and filed in the clerk's office of said Court its certain Answer in the words and figures following, to-wit:

184 *Answer of City of Chicago.*

In the United States Circuit Court, Northern District of Illinois.

No. 26163.

CHICAGO EDISON COMPANY, Complainant,
vs.
SAMUEL B. RAYMOND, County Treasurer and *ex-Officio* County Collector of Cook County, and MAURICE FITZGERALD, Collector of the Town of South Chicago, Defendants.

Answer of the City of Chicago to the Bill of Complaint of the Chicago Edison Company, complainant, filed herein by leave of Court for that purpose first had and obtained.

This defendant, now and at all times hereafter saving and reserving unto itself all benefit and advantage of exception which can or may be had or taken to the many errors, uncertainties and

other imperfections in the said bill contained, for answer thereunto, or to so much and such parts thereof as this defendant is advised is material or necessary for it to make answer unto, answering, says:

1. This defendant admits that the complainant is a corporation organized and existing under and by virtue of the laws of the State of Illinois, and a citizen of the State of Illinois, and has
185 been and is engaged in business in the City of Chicago as alleged in paragraph 1 of Complainant's bill of complaint.

2. This defendant further answering admits that the defendant Maurice Fitzgerald was at the time of filing said complainant's bill of complaint Town Collector of the said town of South Chicago, and as said collector is charged by law with the duty of collecting taxes payable from persons in said Town, and that the defendant Samuel B. Raymond was at the time of the filing of complainant's bill of complaint the County Treasurer and *ex-officio* County Collector of said County, and as such Collector warrants for the said Town of South Chicago will come into his hands for collection, according to law.

3. This defendant, further answering, says, that as to the allegations in Paragraph 3 in Complainant's said bill of complaint, in regard to the information furnished to the assessors of the counties therein named, excepting Cook County, that it has no knowledge or information, save that contained in said bill, and therefore neither admits nor denies the same; but if the same should become material to the issues involved herein, demands strict proof thereof. But this defendant denies that the said complainant or any one for it prepared and filed with the proper officers a schedule of its property assessable in Cook County for the
186 year 1900 in the manner and form and at the time required by law. And denies that full information concerning its tangible property in said Cook County was furnished as alleged in said bill. But this defendant states and alleges the fact to be that the local assessors for the County of Cook did make an assessment of the tangible property owned by the complainant on the first day of April, 1900, and subject to assessment for that year, and returned said assessment as required by law. And this defendant admits that thereafter, in response to notice, complainant, by its counsel appeared before the Board of review for said County, and was given a hearing by said Board of Review, and admit that no change was made in the assessment returned as aforesaid, except a horizontal reduction of Twenty per cent. in the assessment of all personal property in said County; and that the full value of the complainant's property subject to assessment in said County by the local Board of Assessors on the first day of April, 1900, was finally fixed by the Board of Review at the sum of $2,970,970, and at an assessed value of one fifth thereof, and that the same was returned by the proper officer as required by law.

4. This defendant further answering admits that the State Board of Equalization convened in regular session for the year 1900 on

or about the 11th day of September, 1900, and that said
187 State Board equalized the assessed value of the personal property in the State as between the different counties, and added to the valuation as returned by the local assessors for Cook County ten per cent. thereof, making the final full valuation of complainant's property subject to assessment by the local assessors at $3,268,070, and an assessed value of $653,614. This defendant further admits that complainant appeared before said State Board of Equalization by its counsel, and admits that complainant gave to the said State Board of Equalization such information as it deemed advisable, but this defendant says that it has no knowledge or information, except as contained in said bill of complaint, as to what information was furnished the said State Board, and therefore neither admits nor denies the allegations in Complainant's bill of complaint concerning the same, but demands strict proof thereof. But this defendant states and alleges the fact to be that the said State Board of Equalization, at its regular session in the year 1900, did make an alleged assessment of the capital stock and franchises of the complainant above the equalized full value of complainant's tangible property, assessed as aforesaid, at an alleged full value of $1,625,000, and at an alleged assessed valuation of $325,000. But this defendant states on information and belief, and from such information and belief, charges the fact
188 to be, that the full fair cash value of complainant's capital stock and franchise on April 1st, 1900 was greatly in excess of the amount alleged to have been ascertained by the State Board of Equalization, as aforesaid, and was in excess of the sum of $12,271,875; that notwithstanding the fair cash value of complainant's capital stock and franchise as aforesaid, the State Board of Equalization, in total disregard of its duty as required by law, wilfully and fraudulently found the full value of complainant's capital stock and franchise over and above the value of its tangible property to be the sum above set forth, and set down an assessment upon the same at one-fifth thereof, which said fraudulent and illegal action on the part of said State Board in relation to the valuation and assessment of complainant's property was had by and with the concurrent fraudulent action of complainant itself, in its failure to properly list and schedule its property for the purposes of taxation, and to furnish the statements required by law and in its fraudulent representations to the said State Board. This defendant further answering, alleges and states the fact to be, that the said alleged assessment was and has been long prior to the filing of this bill held and declared by the Circuit Court of Sangamon County and by the Supreme Court of the State of Illinois to be null and void, and that a reassessment of the capital stock
189 and franchise of the said complainant over and above the assessed value of its tangible property was ordered by the Circuit Court of Sangamon County.

5. This defendant, further answering, admits that the said alleged assessment made by the said State Board of Equalization was certified by the County Clerk of Cook County, in the manner required by law.

6. This defendant, further answering, admits that taxes were extended against said alleged assessment and that on or about the 6th day of February, 1901, complainant paid to the then collector of the Town of South Chicago the sum of $27,192.75, being the full amount of the taxes extended as aforesaid, but this defendant denies that the said payment was in full discharge of the taxes properly and equitably due from complainant on account of its capital stock and franchise assessment for the year 1900. This defendant further answering says that it is informed and believes that no part of said taxes have been returned or tendered back to complainant.

7. This defendant further answering states upon information and belief, and from such information and belief charges the fact to be, that the full, fair, cash value of complainant's capital stock and franchises on April 1st, 1900, was far in excess of $12,271,875.00,

190 and that the actual fair cash value thereof on said date was in excess of $12,271,875.00, and that notwithstanding the fair cash value of complainant's capital stock and franchises as aforesaid the said State Board of Equalization, in total disregard of its duty as required by law, wilfully and fraudulently found the full value of complainant's capital stock and franchises as heretofore set forth, and set down an assessment of the same over and above the assessment of its tangible property, by the local assessors, as above set forth, which said fraudulent and illegal action on the part of the said State Board of Equalization, in relation to the valuation and assessment of complainant's property was had by and with the concurrent fraudulent action of the complainant itself, in its failure to properly list and schedule its property for the purposes of taxation, and to furnish the statements required by law, and in its fraudulent representations to the said State Board of Equalization. And this defendant further states and alleges the fact to be that the said alleged assessment was and has been long prior to the filing of this bill held and declared by the Circuit Court of Sangamon County and by the Supreme Court of the State of Illinois to be null and void, and that a reassessment of the capital stock and franchises of the said complainant over and above the assessed value of its tangible property was ordered by the Circuit Court of Sangamon

191 County. This defendant further answering admits that while the State Board of Equalization was still in session for the year 1900 a petition for mandamus was filed in the Circuit Court of Sangamon County by the People of the State of Illinois upon the relation of one Catherine Goggin, a resident of Cook County, and Robert C. Steele, a resident of said Sangamon County, and that certain proceedings were had in said cause in and by which a new assessment was ordered in said mandamus proceedings by said Circuit Court of Sangamon County. This defendant further states and alleges the fact to be that it was prayed in said petition for mandamus that said State Board of Equalization be commanded to make a lawful assessment for the year 1900 upon the capital stock and franchises of the complainant herein, and other corporations named in said petition. This defendant further answering admits that neither the complainant herein nor any of said other corpora-

tions were made parties defendant to said petition, but this defendant states upon information and belief, and from such information and belief, charges the fact to be, that this complainant and the other said corporations named in said petition were requested and directed by the said State Board to appear in said proceeding by their own solicitors, and to make such defense or defenses as they might deem admissable, and that this complainant, together with said other corporations did appear in said proceeding in the Circuit Court
192 of Sangamon County, and in the appeal taken therefrom to the Supreme Court of the State of Illinois by their solicitors, and made such defense as they deemed advisable, which defenses were made for the benefit of the complainant herein, and the other said corporations, as fully and effectually as if this defendant and said other corporations had been parties defendant to said petition for mandamus by name. This defendant further answering admits that final judgment was entered by the Circuit Court of Sangamon County, and that an appeal was prayed to the Supreme Court of the State of Illinois, but as to what defenses were interposed in said Circuit Court or in said Supreme Court this defendant has no knowledge or information, save that contained in said bill of complaint, and therefore neither admits nor denies the allegations in said bill concerning the same, but demands strict proof thereof. This defendant further answering admits that on or about the 24th day of October, 1901, the said judgment of the said Circuit Court of Sangamon County was affirmed by the Supreme Court of Illinois, and that thereafter a peremptory writ of mandamus was issued by the Circuit Court of Sangamon County, commanding the said State Board of Equalization substantially as on pages 12 and 13 of Complainant's bill of complaint set forth.

8. This defendant further answering admits that on or
193 about the 17th day of December, 1901, the said State Board of Equalization convened at Springfield, Illinois, in regular session, as required by law, and that prior thereto an election had intervened between the session of the Board in 1900 and the session in 1901, and that the membership of said state Board had largely changed; and further admits that while said State Board was in regular session, as aforesaid, a peremptory writ of mandamus issued on the said judgment of the said Sangamon County Circuit Court was served upon the members thereof. This defendant further answering says that as to the allegations in paragraph 8 of said Complainant's bill of complaint, in regard to the proceedings which were had before said State Board it is not informed by Complainant's said bill of complaint, and therefore it neither admits nor denies the same, but if the same should become material to the issues herein, demands strict proof thereof. This defendant further answering admits that thereafter and on or before the 20th day of November 1901, the said State Board of Equalization made an assessment of the capital stock and franchises of the complainant in the several amounts as alleged on page 17 of the Complainant's bill of complaint; but this defendant further answering denies that said State Board in making said assessment failed or refused to take into ac-

count any former assessment for the year 1900, or refused and neglected to equalize the assessment of complainant's capital
194 stock and franchises with the assessment on all other taxable property in the State of Illinois for said year, and denies that the assessed valuation for the year 1900 of such other property did not exceed one fifth of seventy per cent. of the cash value thereof. But this defendant states and alleges the fact to be that the other property in the State of Illinois was assessed by the different assessing tribunals at what said tribunals considered and ascertained to be one fifth of the full fair cash value thereof. This defendant further answering denies that under the said mandate of the said Circuit Court of Sangamon County, the said State Board of Equalization had no right to take into consideration the rate of assessment of other taxable property as equalized for the year 1900, and denies that said State Board acted under the belief that they had no such right. But this defendant states and alleges the fact to be that in making said assessment in pursuance to said mandate the said State Board of Equalization after taking into consideration the assessment on other properties, and the value of complainant's property, in pursuance of the rules of the said State Board which had heretofore been adopted by said Board, and which had received the sanction of the Supreme Court, ascertained and fixed for purposes of taxation for the year 1901, the value of complainant's capital stock and franchises, as set forth on page 17 of Complainant's bill of complaint.
195 And this defendant further answering states and alleges the fact to be that the complainant herein had due notice, knowledge and information that it was the duty of the said State Board at its said session in 1901, to make an assessment of the capital stock and franchises of the complainant for the year 1901, and that said State Board intended to make such assessment, and that complainant had the right to appear before said Board in regard to the same. This defendant further answering admits that on or about the 22nd day of November, 1900, the State Board of Equalization of the State of Illinois adopted certain pretended resolutions or rules, and further admits that the said Supreme Court in said Mandamus proceedings adjudged that the said rules were in conflict with the revenue laws of the State of Illinois and were illegal and inoperative. And this defendant states and alleges the fact to be that *under* the rules which were theretofore in force, remained in force until on or about the 10th day of December, 1901, when the State Board adopted certain other rules, substantially as set forth on page 19 of Complainant's bill of complaint. This defendant further answering says that as to the allegations in said bill of complaint contained regarding the valuations of taxable property in the State of Illinois, and in Cook County for the years 1899, 1900 and 1901, it has no
196 knowledge or information, except that contained in said bill of complaint, and therefore neither admits nor denies the same, but if such facts should become material to the issues herein, demands strict proof thereof. This defendant further answering denies that the equalized valuation of all taxable property for the year 1899 did not equal one fifth of the actual value of said property,

and denies that the local assessing tribunals of the State assessed property within their jurisdiction with any other view or upon any other basis than upon one-fifth of what they considered and determined to be the actual fair cash value. This defendant, further answering, denies that the equalized assessed valuation of taxable property in the State of Illinois for the year 1900 did not exceed one fifth of seventy per cent of the actual fair cash value thereof, but states and alleges the fact to be that the different assessing tribunals of the state assessed the property subject to taxation by them at an assessed valuation of one fifth of what such tribunals considered and determined to be the actual fair cash value thereof. This defendant further answering says that it has no knowledge or information excepting that contained in said bill of complaint as to what the members of the said Board of Equalization believed was the rate upon which the local assessors throughout the state had based
197 their findings or assessed the full valuation for the year 1900, and therefore neither admit- nor deny the same. And this defendant further answering denies that in making said assessment for the year 1900 there ought to have been any reduction from the valuation as ascertained by said State Board, and denies that the members of said State Board did not exercise their own judgment and discretion in equalizing the valuation of complainant's capital stock and franchises for the year 1900 with the equalized assessment of other taxable property in the State of Illinois for said year. And denies that the members of said State Board were coerced or threatened or considered themselves to be coerced or threatened by said writ of said Sangamon County Circuit Court, or that they were acting or considered themselves to be acting under the specific instructions, or that they were debarred from the exercise of their legal judgment and discretion.

9. This defendant, further answering, admits that said assessment was certified to the County Clerk of Cook County, and that taxes were extended against said assessment and that a warrant for the collection of the same was delivered to the defendant Maurice Fitzgerald, as Town collector of the Town of South Chicago, and that the aggregate amount of such taxes is $148,805.91.

198 10. This defendant, further answering, admits, that the total tax rate extended against said assessment is 7.87 per cent., and that there is included in said sum of $148,805.91 the sum of $7,086.84 interest required to be imposed under the authority of the Revenue law of the State of Illinois; but this defendant denies that it is or was unlawful to include said interest in said tax extension, and denies that the law of Illinois does not authorize any such interest.

11. This defendant further answering denies that the capital stock assessment made in the year 1901 for the year 1900, of the capital stock and franchise of the complainant, is illegal, unequal and wrongful, or in violation of the Constitution of the United States or the Constitution of the State of Illinois, and denies that the assessment of the capital stock and franchises made in the year 1900 has not been vacated by a Court of competent jurisdiction. But this

defendant admits that the complainant herein was not a party defendant in said mandamus proceeding in said Circuit Court of Sangamon County or in the appeal to the Supreme Court of the State of Illinois; but this defendant states and alleges the fact to be that the complainant was requested to make defense, as heretofore in this answer in paragraph 7 is more particularly set forth. But this defendant denies that complainant was entitled to rely upon the
199 original assessment of its capital stock and franchise made in the year 1900, and denies that such assessment could not be set aside except in some proceeding to which complainant was a party by name; and denies that the collection of the taxes against the subsequent assessment of complainant's capital stock and franchise would be a taking of complainant's property without due process of law, or would be in violation of the provisions of the Constitution of the United States or the Constitution of the State of Illinois. This defendant further denies that said subsequent assessment was made without any authority of law, and denies that the same is void, and denies that the complainant is or will be subjected, in consequence of said assessment, to any oppressive or discriminating capital stock assessment, or that it will be subjected to more than its proportionate share of taxation, and denies that said assessment was made upon a different basis than the assessment of other property in the State of Illinois. This defendant further answering admits that complainant is not one of the class of corporations enumerated in paragraph 4 of Section 3 of the General Revenue Act of the State of Illinois, as set forth on page 25 of the Complainant's bill of complaint; but this defendant denies that the provisions of said law are in violation of the provisions of the 14th Amendment of the Constitution of the United States.

200 12. This defendant, further answering, admits that the payment of the taxes extended against the alleged assessment made in the year 1900 of the capital stock and franchise of the complainant was a voluntary payment, and that under the law complainant is not entitled to recover the same. This defendant further admits that it is the duty of the defendants Fitzgerald and Raymond to enforce collection of the taxes extended against the assessment of capital stock and franchise, and that unless said taxes are paid, or the collection thereof is restrained by order of a Court of competent jurisdiction, it will be the duty of said defendants to levy on the property of the complainant.

This defendant, further answering states that it is a municipal corporation duly organized and existing under and by virtue of the laws of the State of Illinois, and that under and by virtue of the laws of the State of Illinois it will be the duty of the County Treasurer and *ex-officio* County Collector of Cook County Illinois, to pay unto this defendant as its share of the taxes so due and owing from the complainant in this cause the sum of $$100,667.54, and therefore this defendant shows that it is in equity the owner of and entitled to receive the said sum of $100,667.54 out of the taxes now in controversy in this cause.

And this defendant, further answering, says that as to the allega-

tions in said Bill of complaint contained not here specific-
201 ally answered, admitted or denied is that this defendant neither admits nor denies the same, but demands strict proof thereof. And this defendant further answering denies that the Complainant is entitled to the relief or any part thereof in said bill of complaint demanded, and prays the same advantage of this answer as if it had pleaded or demurred to the same, and prays to be henceforth dismissed with its reasonable costs and charges in this behalf most wrongfully sustained.

CITY OF CHICAGO,
By DAVID K. TONE,
Special Counsel,
JAMES HAMILTON LEWIS,
Corporation Counsel.

(Endorsed:) Filed May 19, 1906. Marshall E. Sampsell, Clerk.

202 And on to-wit: the twenty-fifty day of July, being one of the days of the regular July term of said Court, 1906, in the record of proceedings thereof in said entitled cause before the Hon. Peter S. Grosscup, Circuit Judge, appears the following entry to-wit:

203 In the Circuit Court of the United States for the Northern District of Illinois, Eastern Division.

26163.

CHICAGO EDISON COMPANY
vs.
MAURICE FITZGERALD, Town Collector of the Town of South Chicago; SAMUEL B. RAYMOND, County Treasurer, and CITY OF CHICAGO.

This cause came on to be further heard at this term, and was argued by counsel; and thereupon, upon consideration thereof, it is ordered that all objections and exceptions to the Master's reports be, and the same are hereby overruled, and that the Master's reports and each of them be, and they are hereby approved and confirmed; and the court finds that all the material allegations of the bill of complaint are sustained by the evidence, and that the equities of the case are with the complainant; and thereupon the court doth order, adjudge and decree as follows:

That the assessment made by the State Board of Equalization of the State of Illinois, at its session in 1901, against the complainant, the Chicago Edison Company upon its capital stock for the year 1900 (the net amount of said assessment being $1,800,761.00), was made under the coercive influence of a writ of mandamus issued
204 by the Circuit Court of Sangamon County, in the State of Illinois, and did not represent the real or independent judgment of the said State Board of Equalization, and that the assessments made by said State Board of Equalization, at its meet-

ing held in 1901, upon the capital stock of the said complainant, and upon the capital stock of the other corporations named in the writ of mandamus above mentioned, for the year 1900, was in fact made upon a materially different basis from that upon which the capital stock of all other corporations of the same class was assessed by the said State Board of Equalization for the year 1900, and also upon a basis materially different from that upon which all other taxable property in the State of Illinois was assessed for the year 1900; that said assessment made in 1901 upon the capital stock of the complainant for the year 1900, was made under the coercive influence of said mandamus without the exercise or application of the judgment of the State Board of Equalization, or the members thereof, to the ascertainment of the value of said capital stock, and without the State Board of Equalization, either in fact or in form, taking into consideration the basis upon which all other taxable property in the State of Illinois was assessed and taxed for the year 1900, and without in fact or in form equalizing the valuation or assessment of the capital stock of said complainant for the year 1900 with all or any of the assessments made upon the other taxable property in the State of Illinois for the year 1900, with the result that the said assessment upon the capital stock of complainant, made in the year 1901 for the
205 year 1900, was made on a much higher basis than that upon which the other taxable property of the State of Illinois was assessed and taxed for the year 1900; that said State Board of Equalization did not take into consideration the fact that a portion of the complainant's capital stock was invested in rights and licenses under United States patents and was therefore not taxable by or under authority of the laws of the State of Illinois but said portion of the complainant's capital stock was included in said assessment; that said assessment upon said capital stock for the year 1900 was and is unjust and inequitable; that the making of said assessment as aforesaid in 1901, upon the capital stock of the said complainant, and the extension of taxes thereon, and the attempt to enforce the payment of such taxes so extended, from complainant, was and is a violation of the Fourteenth Amendment to the Constitution of the United States, and that the attempt to enforce the collection from complainant of the taxes extended on said reassessment will, unless restrained, result in a multiplicity of suits, and in irreparable injury to the complainant.

An order was entered herein on the 28th day of June, 1902, as a condition precedent to the granting of the temporary relief prayed for in the bill of complaint herein, that complainant should pay, in addition to the tax already paid upon the first or original capital stock assessment for the year 1900, the further sum of $42,586.61, making a total capital stock tax to be paid by
206 the complainant for the year 1900 of $69,779.36, which is found and decreed by the court to be all that complainant should equitably be required to pay as a capital stock tax for the year 1900. Said additional sum of $42,586.61 has been paid by complainant to the County Treasurer of Cook County, in com-

pliance with said order, making the total amount paid by complainant, as taxes upon its capital stock for the year 1900, the said sum of $69,779.36.

It is therefore further ordered, adjudged and decreed that the said assessment of $1,800,761.00 on the capital stock of complainant, made by the State Board of Equalization in the year 1901 for the year 1900, and all taxes levied and extended thereon, and now spread upon the books of the tax collecting agencies in the City of Chicago, County of Cook and State of Illinois, for collection, be and they are, and each of them is, illegal, null and void, and that the defendants, Maurice Fitzgerald, Town Collector of the Town of South Chicago, and his successor and successors in office, as such Town Collector, and the defendant, Samuel B. Raymond, County Treasurer of Cook County, Illinois, and *ex-officio* County Collector of said County, and his successor and successors in office, as such County Treasurer and *ex-officio* County Collector, and the defendant, the City of Chicago, and each of them, and each and every of their respective agents, deputies, servants, attorneys and representatives be, and they are, and each of them is,
hereby perpetually enjoined and restrained from in any
207 wise levying or collecting, or in any manner attempting,
directly or indirectly, to levy or collect, or to enforce against the complainant, or against any of its property, said tax or taxes, or any or either of them, or any part thereof.

It is further ordered, adjudged and decreed that the costs of this cause be taxed against complainant.

208 And on to-wit: the tenth day of August, being one of the days of the regular July term of said Court, 1906, in the record of proceedings thereof in said entitled cause before the Hon. Peter S. Grosscup, Circuit Judge, appears as of July twenty-fifth, 1906, the following entry to-wit:

209 In the Circuit Court of the United States, Northern District of Illinois, Eastern Division.

No. 26163.

CHICAGO EDISON COMPANY
vs.
SAMUEL B. RAYMOND ET AL.

This cause this day coming on to be heard, after due notice to all the parties to this cause; and it appearing to the court that prior to the entry of the final decree in this cause on July 25th 1906, the term of office of Samuel B. Raymond, as County Collector, had expired, and that John J. Hanberg, had been duly elected and qualified as his successor in office; and it appearing that prior to the entry of the final decree herein, said John J. Hanberg, as the successor in office of said Samuel B. Raymond, has entered his appearance in this cause and was made a party defendant

and had adopted all the pleadings and proceedings of the other defendants in this cause, and had agreed not to introduce any new evidence.

Now it is hereby ordered that the final decree entered herein on the 25th day of July 1906, be so amended as to insert after the words "City of Chicago" on Page 4, ending on the 4th line from the bottom of said page, the following words:—"And John J. Hanberg, successor in office of said Samuel B. Raymond, as County Treasurer of Cook County, Illinois and *ex-officio* County Collector of
210 Cook County, Illinois, and *ex-officio* Town Collector of the various Towns within the City of Chicago, and his successor and successors in office," this order entered *nunc pro tunc* as of July 25th, 1906.

211 And on to-wit: the tenth day of August, 1906, there was filed in the clerk's office of said court in said entitled cause a certain Certificate in words and figures following to-wit:

Certificate.

In the Circuit Court of the United States, Northern District of Illinois.

No. 26163.

CHICAGO EDISON COMPANY, Complainant,
vs.
SAMUEL RAYMOND, County Collector, ET AL., Defendants.

Be it remembered that on the final hearing of the above entitled cause, before his Honor Judge Grosscup, on the 5th day of June, 1906, counsel for the City of Chicago made and insisted upon before the Court each and every objection in reference to the admission and exclusion of evidence made by the defendants or any of them before the Master, as shown in the various Master's reports now on file in this cause, and said objections and each of them were overruled by the Court, to which rulings and to each of them counsel for the City of Chicago excepted; and counsel for the City of Chicago also objected to the Court hearing or considering any oral evidence for the purpose of explaining, varying or contradicting the official acts, records and proceedings of the said Board of Equalization of the State of Illinois for the year 1900 and 1901 in reference to the capital stock assessment levied by the State Board of Equalization of the State of Illinois against the complainant in the year 1901 as and for the year 1900.

212 Said objection was overruled by the Court, to which ruling counsel for the City of Chicago excepted; the court basing its decree not upon the findings of fact by the Master but upon the evidence contained in the Master's report.

P. S. GROSSCUP.

(Endorsed:) Filed Aug. 10, 1906. Marshall E. Sampsell, Clerk.

213 & 214 And on to-wit: the tenth day of August, 1906, came the defendants in the above entitled cause by their solicitors and filed in the clerk's office of said Court their certain Petition for Appeal in words and figures following to-wit:

215 In the Circuit Court of the United States, Northern District of Illinois, Eastern Division.

No. 26163.

CHICAGO EDISON COMPANY, Complainant,
vs.
SAMUEL B. RAYMOND, County Treasurer, Cook County, Illinois, and *ex-officio* County Collector, Cook County, Illinois, and JOHN J. HANBERG, His Successor in Office as County Treasurer of Cook County, Illinois, and *ex officio* County Collector, Cook County, Illinois, and *ex-officio* Town Collector of the Town of South Chicago, and MORRIS FITZGERALD, Town Collector of the Town of South Chicago, and THE CITY OF CHICAGO, Defendants.

Petition for Appeal.

The above named defendants, Samuel B. Raymond, County Treasurer, Cook County, Illinois, and *ex-officio* County Collector, Cook County, Illinois, and John J. Hanberg, his successor in office as County Treasurer of Cook County, Illinois, and *ex-officio* County Collector of Cook County, Illinois, and *ex-officio* Town Collector of the Town of South Chicago, and Morris Fitzgerald, Town Collector of the Town of South Chicago, and The City of Chicago, and each of them, believing themselves to be aggrieved by the order and decree of this Court, made and entered on the 25th day of July,
216 A. D. 1906, whereby the said defendant- and each of them, and each and every of the officers, agents and employés of the said defendants are perpetually enjoined and restrained from in any way levying or collecting — in any manner attempting to levy or collect or to enforce against the complainant the taxes or any or either of them, made and levied by the State Board of Equalization in the year 1901 for the year 1900, said taxes amounting to the sum of $1,800,761—all of which appears of record in said Court and which decree is more fully set forth in the records in this cause, and the said above named defendants hereby jointly and severally pray an appeal from said order and decree to the Supreme Court of the United States.

HARRY A. LEWIS,
WILLIAM F. STRUCKMANN,
JAMES HAMILTON LEWIS &
DAVID K. TONE,
Solicitors for the Above Named Defendants.

The above appeal is allowed, and the appeal bond is fixed at $200, and said bond to be approved by the Clerk of this Court.

P. S. GROSSCUP.

(Endorsed:) Filed Aug. 10, 1906, Marshall E. Sampsell, Clerk.

217 And on to-wit: the tenth day of August, 1906, came the defendants in said entitled cause by their solicitors and filed in the clerk's office of said Court their certain Assignment of Errors in words and figures following to-wit:

218 In the Circuit Court of the United States, Northern District of Illinois, Eastern Division.

No. 26163.

CHICAGO EDISON COMPANY, Complainant,

vs.

SAMUEL B. RAYMOND, County Treasurer, Cook County, Illinois, and *ex-officio* County Collector of Cook County, Illinois, and JOHN J. HANBERG, His Successor in Office as County Treasurer of Cook County, Illinois, and *ex-officio* County Collector of Cook County, Illinois, and *ex-officio* Town Collector of the Town of South Chicago, and MORRIS FITZGERALD, Town Collector of the Town of South Chicago, and THE CITY OF CHICAGO, Defendants.

Assignment of Errors.

The above named defendants, Samuel B. Raymond, County Treasurer of Cook County, Illinois, and *ex-officio* County Collector, Cook County, Illinois, and John J. Hanberg, his successor in office as County Treasurer of Cook County, Illinois, and *ex-officio* County Collector of Cook County, Illinois, and *ex-officio* Town Collector of the Town of South Chicago, and Morris Fitzgerald, Town Collector of the Town of South Chicago, and The City of Chicago, jointly and each of them separately and severally show that in the record and proceedings in the above entitled cause and in the decree made herein July 25th, 1906, manifest error has occurred, to the prejudice of these defendants and each of them, especially in the following particulars:

First. The said Circuit Court erred in failing and refusing to dismiss this cause for want of jurisdiction in a Federal Court, appearing upon the face of Complainant's bill of complaint.

Second. The said Circuit Court erred in failing to dismiss complainant's bill of complaint for want of jurisdiction because the undisputed evidence in this record shows that a Circuit Court of the United States is without jurisdiction to hear and determine the matters and things charged in Complainant's bill.

Third. The said Circuit Court erred in refusing to hold that the allegations of the complainant's bill of complaint show that the complainant has not been denied by the State of Illinois or its officers, any right, privilege or immunity guaranteed to the complainant by the Fourteenth Amendment to the Constitution of the United States.

219 Fourth. The said Circuit Court erred in refusing to hold that the allegations of complainant's bill of complaint show that the complainant has not been deprived of its property without due process of law, in violation of the Constitution of the United States.

Fifth. The said Circuit Court erred in refusing to hold that the State of Illinois had not denied to the complainant the equal protection of its laws within its jurisdiction.

Sixth. The said Circuit Court erred in refusing to find that the sole grievance complained of in complainant's bill of complaint is that the officers of the State of Illinois charged with the duty of making a fair and equal assessment of the complainant's capital stock, have made an assessment that is unfair and unequal, contrary to and in violation of the Constitution and the Laws of the State of Illinois; and said Circuit Court likewise erred in assuming and retaining jurisdiction of this cause, when, upon the face of the complainant's bill of complaint, it appears that the said Circuit Court was without jurisdiction.

Seventh. The said Circuit Court erred in refusing to hold that inasmuch as the complainant and defendants were all citizens of and residents of the State of Illinois, a Federal Court had no jurisdiction in this cause to hear and determine the fairness, equality or regularity of the assessment made against the complainant, and the said Circuit Court erred in refusing to dismiss this cause for want of jurisdiction.

220 Eighth. The said Circuit Court erred in entering upon a calculation as to the amount of taxes to be paid by the complainant upon its capital stock for the year 1900 and in finding and determining the amount of said taxes, for said Circuit Court should have held that the determination as to the amount of taxes to be paid by all persons within the State of Illinois was a matter exclusively committed by the laws of Illinois to the assessing officers of the State of Illinois.

Ninth. The said Circuit Court erred in overruling the objections and exceptions and each and every of said objections and each and every of said exceptions to the said Master's reports and to each of them.

Tenth. The said Circuit Court erred in approving and confirming the Master's reports and each of them, filed in this cause.

Eleventh. The said Circuit Court erred in failing and refusing to sustain the objections and each and every of the same filed by the defendants to said Master's reports and to each of said reports.

Twelfth. The said Circuit Court erred in finding that all of the material allegations of the bill of complaint are sustained by the evidence and likewise in finding that the equities of the case are with the complainant.

Thirteenth. The said Circuit Court erred in failing to find that the material allegations of the bill of complaint in this cause have not been proved by any competent evidence.

221 Fourteenth. The said Circuit Court erred in finding that the assessment made by the State Board of Equalization of

the State of Illinois at its session in 1901 against the complainant, upon its capital stock for the year 1900, amounting to $1,800,761, was made under the coercive influence of a writ of mandamus issued by the Circuit Court of Sangamon County, in the State of Illinois, and did not represent the real or independent judgment of the said State Board of Equalization.

Fifteenth. The said Circuit Court erred in failing and refusing to find that the assessment, amounting to $1,800,761 made by the State Board of Equalization of the State of Illinois at its session in 1901 against the complainant, upon its capital stock for the year 1900, was made by the said State Board of Equalization in the exercise of its own judgment and upon its official responsibility.

Sixteenth. The said Circuit Court erred in finding that the assessments made by the State Board of Equalization at its meeting, held in 1901, upon the capital stock of said complainant and upon the capital stock of the other corporations for the year 1900, named in the writ of mandamus, issuing from the Circuit Court of Sangamon County, Illinois, were in fact made upon a materially different basis from that upon which the capital stock of all other corporations of the same class were assessed by the State Board of Equalization for the year 1900, and also upon a basis materially different from that upon which all other taxable property in the State of Illinois was assessed for the year 1900.

222 Seventeenth. The said Circuit Court erred in refusing and failing to find that the only competent evidence contained in the record in this cause showed that the assessments made by the State Board of Equalization at its meeting held in 1901, upon the capital stock of said complainant, and upon the capital stock of the other corporations for the year 1900, named in the writ of mandamus, issuing from the Circuit Court of Sangamon County, Illinois, were in fact made upon the same or a similar basis as that upon which the capital stock of all other corporations of the same class were assessed by the State Board of Equalization for the year 1900, and also that said assessments as to each of said corporations were made upon the same or a similar basis upon which all other taxable property in the State of Illinois was assessed for the year 1900.

Eighteenth. The said Circuit Court erred in finding that said assessment made in 1901 on the capital stock of complainant, was made under the coercive influence of a writ of mandamus, issuing from the Circuit Court of Sangamon County, Illinois, without the exercise or application of the judgment of the State Board of Equalization or the members thereof, to the ascertainment of the value of said capital stock and without the State Board of Equalization, either in fact or in form, taking into consideration, the basis upon which all other taxable property in the State of Illinois was assessed and taxed for the year 1900 and without in fact or in form equalizing the valuation or assessment of the capital stock of said complainant for the year 1900 with all or any of the assessments made upon the other taxable property in the State of Illinois for the year 1900, with

223 the result that said assessment made on the capital stock of the complainant, in the year 1901 for the year 1900, was made on a much higher basis than that upon which the other tax-

able property of the State of Illinois was assessed and taxed for the year 1900.

Nineteenth. The said Circuit Court erred in finding that the said State Board of Equalization of the State of Illinois did not take into consideration the fact that a portion of the complainant's capital stock was invested in rights and licenses under United States patents and was therefore not taxable by or under authority of the laws of the State of Illinois, but said portion of the complainant's capital stock was included in said assessment.

Twentieth. The said Circuit Court erred in failing and refusing to find that there was no competent evidence that any portion of complainant's capital stock that was invested in rights and licenses under United States patents, had been taxed or assessed by the said State Board of Equalization of the State of Illinois.

Twenty-first. The said Circuit Court erred in refusing and failing to find that the assessment made in the year 1901 on the capital stock of the complainant, was made without any coercion and in the exercise of the independent judgment of the State Board of Equalization and the members thereof, for the purpose of ascertaining the fair value of the capital stock of said complainant, and that said assessment was obtained and resulted from the said State Board of Equalization equalizing the valuation or assessment of the capital stock of said complainant for the year 1900 with all of the assessments made upon other taxable property in the State of Illinois, and that the assessment so arrived at was just and fair to the said complainant.

224 Twenty-second. The said Circuit Court erred in finding that the making of the assessment for the year 1900 upon the capital stock of said complainant, and the extension of the taxes thereon, and the attempt to enforce the payment of the taxes so extended, from complainant, was and is a violation of the Fourteenth Amendment to the Constitution of the United States.

Twenty-third. The said Circuit Court erred in entering the order on the 28th day of June, 1902, to the effect that the complainant should pay, in addition to the tax already paid, upon the first or original capital stock assessment for the year 1900, the further sum of $42,586.61, making a total capital stock tax to be paid by complainant for the year 1900 of $69,779.36, which was found and decreed by the court to be all that complainant should equitably be required to pay as a capital stock tax for the year 1900, for said Circuit Court should have found, if it had jurisdiction of this cause and of the parties hereto, that the complainant should be required to pay the aggregate amount of all taxes assessed against it in the year 1901 as and for the year 1900 upon its capital stock aggregating $1,800,761.

Twenty-fourth. The said Circuit Court erred in ordering, adjudging and decreeing that the assessment of $1,800,761 on the capital stock of complainant, made by the State Board of Equalization in the year 1901 for the year 1900, and all taxes levied and extended thereon, and now spread upon the books of the tax collecting agencies

in the City of Chicago, County of Cook and State of Illinois,
225 for collection, are and each of them is illegal, null and void, and that the defendants Samuel B. Raymond County Treasurer of Cook County Illinois, and *ex-officio* County Collector of Cook County Illinois and Morris Fitzgerald Town Collector of the Town of South Chicago, in said county and John J. Hanberg, his successor as County Treasurer of Cook County, Illinois, and *ex-officio* County Collector of said County and *ex-officio* Town Collector of the Town of South Chicago in said County and his successor and successors in office as such County Treasurer and *ex-officio* County Collector and *ex-officio* Town Collector of said Town of South Chicago, and the defendant Maurice Fitzgerald Town Collector of the Town of South Chicago and the defendant, The City of Chicago, and each of them, and each and every of their respective agents, deputies, servants, attorneys, and representatives, be and are perpetually enjoined and restrained from in anywise levying or collecting, or in any manner attempting, directly or indirectly, to levy or collect, or to enforce against the complainant, or against any of its property, said tax or taxes, or any or either of them, or any part thereof.

226 Twenty-fifth. The said Circuit Court erred in admitting and receiving in evidence over the objection and exception of defendants' counsel, the following testimony of Samuel M. Barnes, a member of the State Board of Equalization, of the State of Illinois for the years 1900 and 1901:—

I heard the members of the State Board of Equalization discuss the remarks of the court on the application for an extension of time to make return to the writ of mandamus. My recollection of one remark that I heard was that it was a mere question of the Board's getting their pencils and getting to work and they ought to do it. I heard one of the Board say that the court was very vituperative in this matter. I think it was either Mr. Schaefer or Mr. Hopkins of the Committee on the Board who was over there listening to the court. The impression I got was very strongly fixed in my mind and it was that his attitude was intensely hostile to the Board and I was told by those who heard him that it was in the shape of a roast from start to finish as far as his manner was concerned. Of course, I cannot just quote the language he used, but rather his manner I was told was vituperative, absolutely so. I was told this by members of the State Board of Equalization who were present and heard the remarks of the Judge. The reassessment as we determined it, was made with a view to satisfying the court, the order of the court. We made no deduction, if I remember rightly, on account of that all of these Companies but two had in 1900 been assessed upon their capital stock. We did not take into consideration the fact, if it was a fact that other property in the State had not been assessed at the maximum more than 70 per cent. of its value. The court, in his discussion, gave *says* an illustration of the manner in which the assessment should be made and I think he made an example of the Gas Company here; in any event one of the companies he made an ex-
227 & 228 ample of that and in that example he said just how the assessment should be made and as this was an order of

the court, we followed that example that he gave in a general way, for all these assessments. Mr. Smith and Mr. Greenacre furnished these tables (referring to complainant's Exhibit A, 10/23/03) said document being a compilation of the value of the capital stock of said Companies, prepared by Miss Goggin and Miss Haley, as members of the Teachers' Federation. Our desire in making this reassessment was in order to satisfy the Circuit Court of Sangamon County, because it was not my judgment that it was a proper assessment. The general idea seemed to be with the committee on capital stock that the action of the committee was dictated by the court. It was discussed between the committee on capital stock at about the time the reassessment was reported to the Board and the first object to be attained was to satisfy the court. The assessments that were made subsequent to this assessment of 1900 were based on what we believe to be the law and in a general way on the judgment of the members, that is on the real value. The assessment for 1901 we regarded as representing our real judgment and the other we did to satisfy the court. The restraining order issued by the court was dissolved on the 22nd of November and I think it was a very short time after that on that day that we made our return to the writ.

Twenty-sixth. The said Circuit Court erred in admitting and receiving in evidence, over the objection and exception of defendants' counsel, the following testimony of Frank P. Martin, a member of the State Board of Equalization of the State of Illinois for the years 1900 and 1901:—

I remember making the reassessment on or about the 22nd day of November, when a writ of mandamus issued from the Circuit Court of Sangamon County early in November, and that an application was made to the Circuit Court of Sangamon County for an extension of time within which to make the reassessment, and it was denied. I have read in the examination of Dr. Barnes
229 what purport to be the remarks of Judge Thompson on that occasion. Shortly after those remarks were made by the Judge, they were repeated to me and I was familiar with them. A statement was also made, purporting to have come from Judge Thompson that we had better get our candles and lamps and begin to get busy. We felt, when we made the assessment, that we were bound absolutely by the mandate of the court and the deliberations of the court. I felt at the time that the values ought to be made on the information furnished by Mr. Greenacre from the School Teachers. The capital stock committee, of which I was a member, relied for information in fixing the values in the reassessment in relation to the complainant companies, upon the information furnished by the teachers, being complainant's Exhibit A. We made this assessment because I thought I wanted to satisfy the court and what the court wanted was to satisfy Mr. Greenacre and the teachers. I was not taking my own judgment in the matter at all. I did not take into consideration what other property throughout the State was valued at. I did not take into consideration what the capital stocks of these companies had been assessed at for the year 1900. As far as I remember no deduction was made in fixing

the assessed value of the capital stock of these companies on the re-assessment on account of property throughout the State on the average, personal and real, not having been returned at full value for assessment at its full value. In the year 1900 and other previous years the State Board of Equalization did not, I think, treat the bonded indebtedness of corporations as assets, and that was so in respect to all corporations throughout the State.

Twenty-seventh. The said Circuit Court erred in admitting and receiving in evidence, over the objection and exception of defendants' counsel the following testimony of John S. Cruttenden, a member of the Board of Equalization of the State of Illinois for the years 1900 and 1901:

230 "I remember the mandamus suit brought on the relation of Catherine Goggin and R. S. Steele against the State Board of Equalization. The writ of Mandamus was issued from the Circuit Court in Sangamon County, on or about the second of November, 1901, and I remember that an application was made on or about the 9th or 10th of November, to the Circuit Court of said County, for an extension of time within which to comply with the order as expressed in the writ, and I heard read what purported to be the remarks of Judge Thompson made on that application. The information upon which we based the figures that we made for the re-assessment of 1900, was practically based upon the documents laid before us by the Teachers, known as Exhibit B. Our idea in making this assessment, was to comply with the request of the court. The assessment, as finally reached by us, upon these companies named as complainants in these cases, did not represent what we considered to be the value of their capital stock for the purposes of assessment; not according to the information that we gained afterwards. We supposed from this document, that these teachers had pretty reliable information on the values, and we took those figures almost all the way through. We concluded to take the example of the People's Gas Light and Coke Company cited by the court for all the cases, thinking that we would satisfy the court. It was the feeling of the Board that if we did not comply with the idea of the court, whether right or wrong, we would all go to jail. I know I had people calling at my office at Springfield and Chicago, at my offices, and informing me that it would be an unpleasant thing to go to jail about this matter. In making this report which was adopted by the Board, we did not make any deduction on account of the assessment against the capital stock that had been made against these companies. We

231 did not make any deduction, because of the fact that other property in the State had not been assessed, to its full value. We proceeded upon the theory that it was absolutely void; that they were not entitled to any credit, and we would not take any chances of punishment for contempt by giving them credit. You told us (Referring to counsel for Union Traction Company) that the Union Traction Company controlled the stock of the Underlying Companies; but we did not give any credit in the re-assessment. We assessed the whole stock of the other Company, too,

upon the advice of Mr. Greenacre. In the case of the re-assessment of the Chicago Edison Company for 1900, we made no reduction on account of the Capital stock invested in patent rights. Prior to the year 1900, they equalized and endeavored to make the assessment upon the same basis as to value as property throughout the state was assessed.

Twenty-eighth. The said Circuit Court erred in admitting and receiving in evidence over the objection and exception of defendants' counsel the testimony of Louis D. Hirsheimer, a member of the State Board of Equalization of the State of Illinois, for the year 1901:

"I remember that about the 2nd of November, 1901, a writ of mandamus issued against the members of the State Board of Equalization, returnable November 22nd, I believe, and that an application was made by the members of the State Board for an extension of time, within which to comply with the order of the court as expressed in its writ. The next morning I heard what purported to be extracts from the remarks of Judge Thompson, in rendering his decision on the application for an extension. The remarks were freely discussed at the hotel by members of the Board, and I was informed that he was very much displeased by the application for an extension even being asked; and finally gave them the ultimatum of making an assessment, or being
232 punished for contempt of court. I heard him say that all that was necessary was a lead pencil and a little time, that all it required was the sharpening of a lead pencil and getting to work. The printed form furnished by Miss Haley and Miss Goggin were principally relied upon in making up the figures. Before our report was made I talked with Mr. Smith. Mr. Greenacre stated that the report was all right. I felt that anything Mr. Greenacre would recommend the court would perhaps consider to some extent as right. I heard him say that whatever the views of any member of the Committee as to values to be taken the opinion laid down there was what it would be, or something to that effect. In making up the report, I did not take into consideration the fact that there had been assessments made on all of the complainant companies, except two. In making up the report as to the values of these properties, I did not make any deduction whatever, in order to equalize the values of these properties with the values of other property in the State. We made an application for an extension of time to make these returns, in order to have more time to consider it, in arriving at our conclusion; but when that was denied, we had to make our report on such information as we had. In making these figures, to a very large extent, we acted upon the wishes of the Teachers' attorney and the Court's instructions.

In the matter of the Chicago Edison Company's assessment for the year 1900, the capital stock was $6,000,000. That was assessed at 125, and a credit of $725,000 given for United States Patents, leaving $6,775,000. Taking the debt at par, $5,508,000, making a total value of $12,283,000 on a basis of 70 per cent.; making $8,598,100; tangible property, $4,909,165, leaving

3,688,935, full value of the capital stock; one fifth value $737,787.

233 Twenty-ninth. The said Circuit Court erred in admitting and receiving in evidence over the objection and exception of defendants' counsel, the testimony of William M. Flook, as follows:

I made certain mathematical calculations and deductions, which are set forth in "Flook Exhibit A 11/25/03, H. W. B." That Exhibit was compiled, in a general way, from the collection and compilation of statistics and figures from the records of the State Board of Equalization, from the time it first commenced to make reports, in 1873, down to 1900, and from the report of the Railroad and Warehouse Commission of the State of Illinois, for 1900, *and from the report of the Railroad and Warehouse Commission of the State of Illinois, for 1900,* and from Brown's Directory of Gas Companies for the year 1900. I have reduced the result of that work to the form of a report or statement. This statement has been made from the source I have now described (referring to said Flook Exhibit A).

Thirtieth. The said Circuit Court erred in admitting and receiving in evidence, over the objection and exception of defendants' counsel, the document shown as "Flook Exhibit A, 11/25/03 H. W. B." as follows:

"From the report of the Railroad and Warehouse Commission for the year 1900 (pp. lxxx*ll*-lxxxv*ll*) it appears that there were in that year 116 railroad companies operating within the state of Illinois that the total mileage of main line and branches owned by said railroad companies was 47,685.37; miles; that of such total mileage so owned by said railroad companies, 10,817.10 miles of main line and branches were located in Illinois; that 1,548.71 miles of second, third and fourth additional main tracks were so owned and located in Illinois; that 4,248.86 miles of yards, tracks, sidings and spurs were so owned and located in Illinois; that 164.61 miles of industrial tracks were so owned and located in Illinois,

234 and that 103.52 miles of new line building during the year 1900, exclusive of side tracks, were so owned and located in Illinois.

From said report it further appears (pp. lxxxv*ll*-xc*lll*) that the total amount of outstanding *of* capital stock of said railroad companies was $1,401,508,589.; that the amount of capital stock per mile of line was $28,867.; that the total amount outstanding of bonded debt of said railroad companies was $1,667,190,160.; and that the amount of funded debt per mile of line was $34,305.

Assuming that the value of the railroad property in this state was as great per mile of road as that out side of the state, and multiplying the mileage of the main lines and branches in Illinois (10,817 miles) by the amount of capital stock per mile of line ($28,867.), it appears that the capital stock of said 116 railroad companies represented by the mileage of main lines and branches owned by said railroad companies in this state was $312,254,339.

Upon the same basis, multiplying the mileage of the main lines

and branches in Illinois (10,817 miles) by the amount of funded debt per mile of line ($34,306.), it appears that the funded debt of said 116 railroad companies represented by the mileage of main lines and branches owned by said railroad companies in this state was $371,077,185.

Upon the same basis the total amount of capital stock and funded debt represented by the mileage of main lines and branches owned by said railroad companies within this state was $683,331,524.

From the published report of the State Board of Equalization for the year 1900 it appears that the full value of all the railroad property in the State of Illinois, as found*ed* by said Board, included main tracks, second main tracks, side or turnout tracks, buildings on right of way and rolling stock, was $389,393,360.

235 From the published report of the State Board of Equalization for the year 1873 (p. 35) it appears that the following resolution was referred to the Committee on Assessment of Capital Stock of Corporations:

"Resolved, that for the purpose of equalizing between land, town and city lots, personal property, railroads and corporations, sixty per cent. be the rate of general average in the State."

From the published report of said Board for the year 1874 (p. 79) it appears that the Committee on Capital Stock of Corporations made a report to the Board, accompanying which was a table (pp. 86, *et seq.*) showing "The assessment of capital stock of companies and associations incorporated under the laws of this State, other than railroad companies." Such companies and associations are listed in said table under the following headings: "Name of company; Location; Capital stock paid up; Total indebtedness, except for current expenses; Market or actual value of paid capital stock and debt, as determined by the state board; Capital stock and debt, as equalized with the aggregate assessment of the state, by deducting forty per cent. of market or actual value; Total equalized value of tangible property assessed where located; Assessed and equalized value of capital stock, being excess of equalized value of capital stock and debt over equalized value of tangible property." The report of said Committee was adopted by the Board (p. 96).

236 From the published report of said Board for the year 1875 (pp. 8, 9) it appears that the following resolution was adopted:

"Resolved that in the opinion of this Board, the real and personal property of the state is assessed for the year 1875 at fifty per cent. of its cash value."

From the published report of said Board for the year 1876 (pp. 7, 9) it appears that the following resolution was adopted:

"Resolved that it is the opinion of this Board that the real and personal property of the State has been assessed at fifty per cent. of its cash value, for the year 1876."

From the published report of said Board for the year 1877 (pp. 17, 18) it appears that the following resolution was offered:

"Resolved that it is the opinion of this Board that the real and

personal property of the State is assessed for the year 1877 at sixty per cent. of its cash value."

That an amendment changing the percentage from sixty per cent. to fifty per cent. was accepted by the mover of such resolution, and that the same was then adopted.

From the published report of said Board for the year 1878 (p. 10) it appears that the following resolution was offered:

"Resolved that it is the opinion of this Board that the real and personal property of the State is assessed at sixty per cent. of its cash value for the year 1878."

That said resolution was amended by changing the percent-
237 age from sixty per cent. to fifty per cent., and as amended adopted.

From the published report of said Board for the year 1879 (pp. 10, 11) it appears that the following resolution was offered:

"Resolved that it is the opinion of this Board that the real and personal property of the State, is assessed at sixty-five per cent. of its cash value for the year 1879."

That said resolution was amended by changing the percentage from sixty-five per cent. to fifty per cent., and as amended adopted.

From the published report of said Board for the year 1880 (p. 6) it appears that the following resolution was adopted:

"Resolved that in the opinion of this Board the real and personal property of the state is assessed at fifty per cent. of its cash value, for the year 1880."

From the published report of said Board for the year 1881 (p. 9) it appears that the following resolution was adopted:

"Resolved that in the opinion of this Board the real and personal property of the State is assessed at fifty per cent. of its cash value, for the year 1881."

From the published report of said board for the year 1882 (p. 6) it appears that the following resolution was adopted:

"Resolved that in the opinion of this Board the real and personal property of the State is assessed at fifty per cent. of its cash value, for the year 1882."

238 From the published report of said Board for the year 1883 (p. 5) it appears that the following resolution was adopted:

"Resolved that in the opinion of this Board the real and personal property of the State is assessed at fifty per cent. of its cash value for the year 1883."

From the published report of said Board for the year 1890 (p. 5) it appears that the following resolution was adopted:

"Resolved that in the opinion of this Board, the real and personal property of this State, as returned by the local assessors for the year 1890, is assessed at twenty-five per cent. of its fair cash value."

From the published report of said Board for the year 1891 (p. 9) it appears that the following resolution was adopted:

"Resolved that in the opinion of this Board, the real and personal property of this State, as returned by the Local Assessors for the year 1891, is assessed at an average rate not exceeding twenty-five per cent. of its fair cash value."

From the published report of said Board for the year 1893 (p. 10) it appears that the following resolution was adopted:

"Resolved that in the opinion of this Board, the real and personal property of this State, as returned by the Local Assessors for the year 1893, is assessed at an average rate not exceeding twenty-five per cent. of its fair cash value."

As to each of the years from 1873 to 1900, inclusive, except the years expressly above referred to, no resolution similar to those above quoted was adopted: but the reports of said Board for each
239 year show that the column containing the assessment placed by said Board upon the capital stock of corporations, other than railroad companies, is entitled in the following language:

"Net assessment of capital stock, being excess of equalized value over the equalized value of tangible property."

240 Statement showing the capital stock and outstanding bonded indebtedness (as shown by Brown's Directory of American Gas Companies for 1900) of gas companies in Illinois, other than the People's Gas Light and Coke Company, together with the equalized value of the tangible property, and the "full value" of the capital stock and franchises of such companies as fixed by the state board of equalization for purposes of taxation in the year 1900.

	Capital stock.	Bonds.	Equalized value of tangible property.	Full value of capital stock and franchises as fixed by board.
Alton Ry. Gas & Electric Co	$500,000	$450,000	$39,276	$201,380
Aurora Gas Light Co	300,000	230,000	.....	25,000
Belleville Gas Light & Coke Co	50,000	17,000		
Union Gas & Electric Co. (Bloomington)	400,000	7,793	.....	163,965
People's Gas & Electric Light Co. (Canton)	50,000			
Centralia Light & Power Co	47,000	.....	5,100	30,500
Urbana & Champaign Gas & Electric Co. (Champaign)	500,000	435	25,045	250,000
Clinton Gas Co. (new Company)	50,000			
Danville St. Ry. & Light Co	700,000	525,000	85,000	425,000
Decatur Gas & Electric Co	400,000	372,000	35,481	250,000
Dixon Power & Lighting Co	100,000	38,500	.....	12,500
Du Quoin Light, Heat & Power Co	50,000	40,000	8,021	45,105
Elgin American Gas Co	100,000	305,000	.....	20,000
Northwestern Gas Light & Fuel Co. (Evanston)	2,000,000	.... .	.. ...	25,000
Freeport Light & Fuel Co	100,000	36,000	5,563	57,815
Galena Gas Light Co	63,000			
Galesburg Gas & Electric Light Co	350,000	350,000	21,199	155,995
Galva Gas Light & Coke Co	30,000			
241 Jacksonville Gas Light & Coke Co	200,000	38,500	19,307	101,535
Joliet Gas Light Co	300,000	285,000	27,744	188,720
Citizens' Gas Co. (Kankakee)	150,000			
Kewanee Light & Power Co	100,000	80,000	6,315	56,575
La Grange Gas Co. (New Company)	100,000			
Peru-La Salle Gas Light and Power Co. (La Salle)	130,000	100,000		
Lincoln Gas Co	100,000	85,000	4,800	90,000
Litchfield Light, Heat & Power Co	50,000	35,000	263	6,315
Macomb Electric Light & Gas Co	50,000			
Mattoon Gas Light & Coke Co	50,000	50,000	.....	12,500

Statement showing the capital stock, etc.—Continued.

	Capital stock.	Bonds.	Equalized value of tangible property.	Full value of capital stock and franchises as fixed by board.
Mendota Light & Heat Co	$25,000	$8,800	.....	$5,000
People's Power Co. (Moline)	300,000	200,000	$17,923	115,000
Monmouth Gas Co	30,000	20,000	8,500	42,500
Morris Gas Co	40,000	20,000	1,496	12,480
Murphysboro Water Works, Electric & Gas Light Co	80,000	80,000	10,817	56,586
Ottawa Gas Light & Coke Co	100,000	.....	3,822	24,110
Paris Gas Light & Coke Co	50,000	.....	.....	10,000
Pekin Light, Heat & Power Co	100,000	100,000	7,734	63,670
People's Gas & Electric Co. (Peoria)	500,000	.....	37,422	212,110
Peoria Gas Light & Coke Co	300,000	.....	47,200	236,000
Quincy Gas & Electric Co	600,000	600,000	31,255	300,000
Rockford Gas Light & Coke Co	300,000	485,000	16,754	125,000
Springfield Gas Light Co	75,000	.....	27,264	136,320
Sterling Gas & Electric Light Co	40,000	36,000	5,560	27,800
Streator Gas & Light Co	100,000	60,000	.....	15,000
Citizens' Gas Light & Fuel Co. (Taylorville)	12,280	.....	553	10,000
North Shore Gas Co. (Waukegan)	1,000,000			
Ogden Gas Co. (Chicago)	5,000,000	.....	37,826	239,130
	$15,922,280	$4,782,235	$572,982	$3,948,610

242 *Statement Showing Aggregate Assessments Made by Local Assessors in the Years* 1873 *to* 1900.

1873	$1,210,108,863
1874	1,105,658,176
1875	1,025,428,289
1876	958,405,803
1877	892,380,972
1878	818,987,409
1879	744,742,846
1880	739,462,515
1881	746,034,852
1882	750,635,758
1883	756,422,291
1884	746,547,501
1885	733,533,951
1886	726,178,132
1887	726,078,638
1888	709,304,506
1889	711,515,026
1890	727,549,707
1891	737,504,791
1892	745,754,172
1893	760,837,855
1894	737,989,016
1895	743,840,153

1896	731,215,488
1897	713,443,706
1898	693,443,706
1899	895,869,090
1900	779,513,078

243 *Statement Showing Total Value of Personal Property as Assessed by Local Assessors for the Years* 1873 *to* 1900.

1873	$301,566,517
1874	267,469,471
1875	239,102,189
1876	212,893,542
1877	187,648,455
1878	169,815,099
1879	151,629,963
1880	165,091,710
1881	168,674,777
1882	167,304,024
1883	167,276,876
1884	159,767,095
1885	153,333,048
1886	147,998,610
1887	148,246,088
1888	140,990,725
1889	142,726,240
1890	141,981,057
1891	143,529,274
1892	143,799,494
1893	145,136,023
1894	127,973,857
1895	129,254,545
1896	120,428,916
1897	117,098,946
1898	114,215,007
1899	183,526,987
1900	166,542,866

244 *Statement Showing the Aggregate Value of Lands as Assessed by the Local Assessors During the Years* 1873 *to* 1900.

1873	$643,196,808
1874	586,022,941
1875	552,012,889
1876	522,394,667
1877	491,723,358
1878	447,942,329
1879	412,208,278
1880	398,338,737
1881	399,267,959

1882	395,757,100
1883	394,016,653
1884	389,109,470
1885	380,488,162
1886	371,940,467
1887	365,476,933
1888	352,995,885
1889	348,604,543
1890	345,750,094
1891	343,624,261
1892	339,043,920
1893	338,064,144
1894	334,030,873
1895	332,409,485
1896	329,474,124
1897	323,837,358
1898	319,047,998
1899	315,963,816
1900	309,394,797

245 *Statement Showing the Aggregate Value of Town and City Lots as Assessed by the Local Assessors During the Years* 1873 *to* 1900.

1873	$241,820,362
1874	245,854,685
1875	228,814,552
1876	218,055,488
1877	208,540,957
1878	197,031,558
1879	177,567,698
1880	173,260,959
1881	176,023,751
1882	185,592,977
1883	193,063,755
1884	195,642,562
1885	197,741,226
1886	203,835,559
1887	210,112,460
1888	213,400,542
1889	218,332,464
1890	237,654,199
1891	249,141,918
1892	260,408,429
1893	275,029,263
1894	273,693,566
1895	280,074,344
1896	279,307,191
1897	270,633,137
1898	258,323,686
1899	393,262,409
1900	300,913,328

246 *Statement Showing Aggregate Assessment on Town and City Lots in Cook County as Assessed by the Local Assessors During the Years* 1873 *to* 1900.

1873	$90,447,759
1874	100,689,670
1875	97,795,613
1876	96,789,412
1877	94,637,338
1878	95,374,127
1879	85,791,192
1880	85,635,165
1881	87,192,987
1882	95,448,675
1883	101,456,866
1884	103,408,025
1885	107,295,606
1886	112,994,128
1887	119,437,668
1888	123,132,781
1889	126,795,669
1890	143,347,119
1891	150,690,710
1892	157,446,400
1893	164,389,327
1894	165,045,268
1895	169,252,421
1896	167,671,344
1897	158,767,689
1898	146,672,035
1899	285,717,467
1900	192,550,863

Comparative Statement Showing State Aggregate Average of the Value of Personal Property, as Assessed by Local Assessors for the Years 1873 to 1900

	Horses.	Cattle.	Mules and asses.	Sheep.	Hogs.	Steam engines, including boilers.	Fire or burglar-proof safes.	Billiard tables, etc.	Carriages and wagons.	Watches and clocks.	Sewing and knitting machines.	Pianos.	Melodeons and organs.
1873....	$52.41	$17.74	$59.09	$1.96	$3.17	$679.05	$105.80	$92.58	$35.86	$6.89	$32.50	$142.95	$60.39
1874....	45.92	15.63	50.39	1.62	2.60	582.67	84.63	75.21	31.22	5.61	25.31	117.63	53.02
1875....	40.95	14.27	45.75	1.51	2.90	504.27	76.83	65.56	27.72	5.65	21.56	102.57	47.22
1876....	36.92	13.37	40.70	1.44	3.35	408.85	65.85	55.86	24.92	4.55	18.32	87.68	41.58
1877....	33.90	12.38	36.92	1.30	2.56	364.89	58 94	48.14	21.94	4.01	14.01	76.43	35.99
1878....	29.63	11.19	32.39	1.15	1.50	321.94	53.30	39.14	18.88	3.62	10.44	67.42	28.95
1879....	26.63	10.15	28.82	1.10	1.36	194.15	45.19	34.23	17.13	3.18	8.42	59.23	24.66
1880....	26.56	9.95	29.77	1.29	1.53	247.99	40.71	30.44	16 56	3.11	7.71	54.68	22.36
1881....	27.66	10.04	31.50	1.29	1.86	236.64	40 23	29.98	17.01	3.00	7.29	52.42	20.55
1882	28.22	10.18	31.17	1.28	2.03	247.88	38.71	31.24	15.34	2.94	6.79	51.12	19.42
1883...	28.89	10.45	32.21	1.25	2.23	240.05	32.56	31.10	14.42	2.83	6.39	49.21	18.20
1884....	28.41	10.15	31.20	1.16	1.85	221.29	33 75	31.02	13.62	2.78	5.97	46.11	16.92
1885....	27.16	9.61	29.26	.99	1.55	205.57	31.92	28.83	12.52	2.62	5.58	45.88	14.89
1886....	26.13	8.84	27.39	.95	1.32	184.78	29.29	27.55	11.72	2.53	5.25	42.39	14.09
1887....	25.80	8.31	26.79	.96	1.48	176.79	28.39	24.92	11.38	2.47	5.12	40.18	13.41
1888....	24.88	7.11	25.03	.96	1.42	167.35	26.50	24.27	10.71	2.39	4.74	38.45	12.46
1889....	24.21	6.59	24.46	.98	1.52	154.37	26.10	23 39	10.10	2.27	4.53	37.00	11.74
1890....	22.96	6.43	23.44	1.02	1.39	151.97	25.73	22.89	9.67	2.19	4.46	37.16	11.25
1891....	21.96	6.30	22.94	1.07	1.25	149.14	25.82	21.66	9.35	2.16	4.34	34.29	10.51
1892...	20.74	6.07	21.64	1.06	1.26	142.50	25.00	22.09	9.10	2.09	4.23	33.65	10.11
1893....	19.41	6.34	20.69	1.04	1.69	138.51	23.06	21.09	9.15	2.05	4.12	32.63	9.75
1894...	14.87	6.26	16.63	.84	1.43	130.37	21.84	19.31	8.55	1.98	3 98	29.74	9.11
1895....	12.84	6.68	13.84	.85	1.42	125.87	21.22	18.38	8 09	1.92	3.94	29.08	8.63
1896....	11.33	6.49	12.15	.80	1.26	121.88	20.54	18.59	7.83	1.91	3.74	27.49	8.22
1897....	10.49	6.58	11.14	.82	1.29	117.99	20.67	16.91	7.29	1.78	3.59	26.58	7.90
1898...	10.64	6.63	11.69	.86	1.22	112.96	19.40	16.43	7.02	1.72	3.48	25.75	7.36
1899....	8.20	5.03	8.83	.72	.84	94.88	10.16	13.10	4.71	1.64	2.21	19 53	4.95
1900....	9.06	4.92	9.88	.76	1.07	85.99	9.41	7.92	4.45	1.52	1.99	18.09	4.39

248 Thirty-first. Said Circuit Court erred in admitting and re-receiving in evidence, over the objection and exception of Defendants' counsel, the testimony of Edward J. E. Ward, as follows:—

I have been familiar for over twenty years with the concern known as the Union Stock Yards and Transit Company; said Company is a very large market for the sale of all sorts of live stock, cattle, hogs, horses and so forth. It is the sole market of the kind in Cook County for cattle, hogs, sheep and live-stock generally. I have procured, under direction, the annual reports of the Union Stock Yards and Transit Company, and from those reports and from other data I have prepared a statement showing the number of cattle, the hogs and horses received at the Union Stock Yards and Transit Company during the year- 1899 to 1901 inclusive, the total value of each kind of animals, and average value per head, compiled from those statistics. This paper which I now show you, is that compilation.

(Witness here produced Ward Exhibit B, November 12, 1903.)

From this compilation it appears that during the year 1899, 2,514,-446 head of cattle, of a total value of $123,207,854, or an average value of $49 per head, was received; in the same way, for the year 1900, there were 2,729,046 head of cattle, of a total value of $136,-452,300, of the average value per head of $50; and in the year 1901, without specifying the name or number of cattle, the average price received was $48 per head. In 1899 the average price per head was $9.74.

249 For the year 1900, the average price per hog received was $11.84; for the year 1901, $13.00. With reference to horses, the average price received in 1899 was $112.50; in 1900, $116; in 1901, $120. All these figures are taken from the annual reports of the Union Stock Yards and Transit Company that have been referred to.

Thirty-second. The said Circuit Court erred in admitting and receiving in evidence, over the objection and exception of defendants' counsel, the document known as Ward Exhibit B, November 12, 1903, which was as follows:—

WARD EXHIBIT B, Nov. 12, '03.

Statement showing the number of cattle, hogs and horses sold at the Union Stock Yards, Chicago, during the calendar years 1899 to 1901, inclusive, the total value of each kind of animals and the average value per head. Compiled from the annual statistical reports of the Union Stock Yard and Transit Company for the years indicated.

Cattle.

Year.	Number of head.	Total value.	Average per head.
1899	2,514,446	123,207,854	$49
1900	2,729,046	136,452,300	50
1901	3,031,396	145,507,008	48

Hogs.

1899	8,177,870	$79,734,233	9.74
1900	8,109,064	96,092,408	11.84
1901	8,290,494	107,776,422	13.00

Horses.

1899	111,611	12,556,237	112.50
1900	99,010	11,485,160	116.00
1901	109,353	13,122,360	120.00

Thirty-third. The said Circuit Court erred in admitting and receiving in evidence over the objection and exception of defendants' Counsel, a report from the Illinois State Board of Agriculture for December 1900, as follows:—

"Livestock, Hogs: There is a slight increase in the number of hogs assessed this year over 1899, the number reported being 2,829,960. In the Northern Division of the State there were 1,210,227; in the Central Division 1,138,979; and in the Southern Division 480,754. At the equalized value of $1.07 per head, they were worth $3,028,057.00. The number of corn fed hogs marketed was 2,348,855, or 83 per cent. of the number assessed, and their average live weight was 225. The heaviest hogs marketed were in Northern Illinois, where their average weight was 243 pounds. In the Central Division the average weight was 218 pounds and in the Southern Division 195 pounds. The total live weight of the hogs marketed during the year was 527,833,094. The average price received of $4.35 per cwt. is the highest since 1894 and varied but little in different sections of the State. At this rate the total value of the hogs marketed would be $23,066,408, of which amount Northern Illinois received $10,609,820.00; Central Illinois $9,126,358; and Southern Illinois, $3,330,230.00."

"The following table shows assessed and marketed in 1899, as well as their weight and value for the last 45 years. For 1899, the

assessor's returns of the number of hogs was 2,796,483, of a value of $2,349,046.00. 83% is the estimated per cent. of the total crop that was marketed. The number of hogs that were marketed in that year was 2,321,060. The total gross weight per head was 234 pounds; the total gross weight 542,267,060 pounds. The value per cwt. gross, $3.60; and the total value of hogs marketed was $19,658,897.00.

"For the year 1900 the Assessors' returns were 2,829,960 hogs of the value of $3,028,057.00. 83% is the estimated per cent. of the total number that were marketed. The total number that were actually marketed is 2,348,855. The average gross weight per head was 225 pounds. The total gross weight, 527,833,094; the value per cwt. gross, was $4.35, and the total value received, from hogs marketed $23,066,408.00.

"More cattle were reported by the Assessors this year than last, 2,009,598 being returned. Of this number 1,085,050 were in Northern Illinois, 658,663 in Central Illinois, and 265,885 in the Southern Division of the State at the equalized value of $4.92 per cwt., (?) they were worth to the feeder $9,887,222. 23% of the number assessed, or 462,197 were marketed, their average live weight being 1125 pounds. In the Northern Division of the State the average weight of the cattle marketed was 1115 pounds; in Central Illinois 1205 pounds; and in Southern Illinois but 968 pounds. The total weight of cattle marketed was 520,065,373 pounds. The average value of the cattle sold during the year was $4.25; and the total value $22,089,527.00,—the best returns for this class of live stock since 1884. Over half of this amount $11,586,603.00 should be credited to Northern Illinois, $8,209,791.00 to Central Illinois and $2,203,073 to Southern Illinois."

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Thirty-fourth. The said Circuit Court erred in admitting and receiving in evidence, over the objection and exception of Defendants' Counsel, the document known as Ward Exhibit C, November 12, 1903, as follows:—

WARD EXHIBIT C., Nov. 12, '03.

Statement Showing the Number of Head of Horses, Cattle and Hogs in the State of Illinois, returned for taxation in 1900 by the Local Assessors, compared with the number of Head of Horses, Cattle & Hogs in the State of Illinois, on June 1st, 1900, according to United States Census Office returns.

Kind.	Number of head returned by local assessors in Illinois for 1900.	U. S. Census for June 1st, 1900.	Difference.
Horses	1,209,446	1,350,219	140,773
Cattle	2,438,275	3,104,010	665,735
Hogs	2,690,367	5,915,468	3,225,101

253 Thirty-fifth. The said Circuit Court erred in admitting and receiving in evidence, over the objection and exceptions of defendants' Counsel, the following evidence admitted into the record between counsel only in the event that the same was competent and material to the issues:

"That the Union Stock Yards and Transit Company now owns and conducts in the City of Chicago a live stock yard and market for the reception, handling, sale and disposition of all kinds of live stock, and has continuously conducted and operated the same since 1865;

That at said market there is received annually a large number of horses, cattle, hogs, sheep and other live stock which are sent to said market to be sold and disposed of to purchasers there gathered from all parts of the United States and Europe;

That such live stock is received from all parts of the United States but chiefly from the territory lying west, north and south of the State of Ohio;

That in the course of business, as conducted at said market, the prices of all live stock sold in said market are recorded in books kept for that purpose by the Union Stock Yards and Transit Company, and that said Union Stock Yards and Transit Company annually and at the end of each calendar year or shortly thereafter compiled and tabulates the result of the trade in said live stock during said year at said market, and the prices realized for the said live stock, which tabulation of values is thereupon by the

254 Union Stock Yards and Transit Company printed and published generally in the form of the annual report heretofore produced and offered in evidence by the complainant at the hearing before the Master on November 12, 1903;

That from the annual report of said Union Stock Yards and Transit Company appears that the total receipts of live stock at said market since its establishment in the year 1865 up to and including the year 1901 were

65,125,851 Head of Cattle,
2,518,278 Calves,
202,197,439 Hogs,
52,142,667 Sheep,
1,644,620 Horses.

That the total sum realized for the live stock so received and sold at the said market during that period was the sum of $5,792,705,549.00."

Thirty-sixth. The said Circuit Court erred in admitting and receiving in evidence over the objections and exceptions of defendants' Counsel the testimony of Williston Fish, as follows:

I am a lawyer, in the employ of the Chicago Union Traction Company. I prepared the schedules of property for the Company for the years 1900, 1902, and 1903. I have made an investigation of the sales of stocks and bonds of the Chicago Union Traction Company and the Underlying Companies on the Stock Exchange during the entire existence of the Chicago Union Traction Company, and I

have made a memorandum of the amount of such sales,
255 which is contained in this report. (Referring to Exhibit 1 to the deposition of Williston Fish.) I used the yearly reports made by the newspapers called the Economist, published in Chicago, and giving the sales and prices for each year from 1899 to 1903, and I also obtained the reports from the daily papers, published in Chicago during that time. I have an intimate knowledge of the affairs of the Company and the market quotations for the last four years of the stocks and bonds of the Chicago Union Traction Company, and its underlying companies, on the stock exchange, do not give a fair indication of the real value of the property of said company. I have spent about a third of my time since 1899, in making inventories, and examining the tangible personal property of said Chicago Union Traction Company and the underlying Companies. On April 1st, 1900, all of the property of the Chicago Union Traction Company, including realty and personalty and franchises was worth less than $27,000,000, and all the property of the underlying companies at the same time was worth $12,242,972.12.

Thirty-seventh. The said Circuit Court erred in admitting and receiving in evidence, over the objection and exception of Defendants' Counsel, the document known as Exhibit 1 of the testimony of W. Fish 11/25/'03 as follows:

The following statement shows the high and low values on the Chicago Stock Exchange and the amounts dealt in of the stocks and bonds named, in each of the years 1898, 1900, 1901, 1902, and in 1903 up to November.

256 Chicago Union Traction Company.

Common Outstanding, 20,000.

	Date low.	Low.	High.	Date high.	Sales.
1899	Dec. 22	23	39	Aug. 25	40,066
1900	Dec. 15	8½	29½	Jan. 5	47,577
1901	May 9	9½	20⅜	May 28	126,544
1902	Jan. 16	10	22⅞	Apr. 29	134,032
1903	June 19	3½	17	Jan. 13	23,245

257 Chicago Union Traction Company.

Preferred Outstanding, 12,000,000.

	Date low.	Low.	High.	Date high.	Sales.
1899	Dec. 22	72	87¾	Aug. 31	28,158
1900	Dec. 15	40	78¼	Jan. 2	45,211
1901	Dec. 19	47	61½	June 7	41,222
1902	Dec. 23	45	59½	Apr. 29	19,420
1903	Apr. 22	26	51	Jan. 13	8,365

258 West Chicago Street Railway Company.

Issued	13,189,000
Owned by C. U. T. Co	3,216,000
Outstanding	9,973,000

Year.	Date low.	Low.	High.	Date high.	Sales.
1899	Jan. 3	91⅝	124¼	Sept. 1	127,989
1900	Dec. 22	96½	113	Feb. 5	31,405
1901	Nov. 21	90	108	Mar. 15	30,108
1902	Dec. 15	83	103¼	May 2	14,680
1903	Oct. 10	50	93	Jan. 14	8,717

259 North Chicago Street Railroad Company.

Stock issued	7,920,000
Owned by C. U. T.	2,022,600
Outstanding	5,897,400

Year.	Date low.	Low.	High.	Date high.	Sales.
1899	Jan. 24	217	254½	May 1	20,256
1900	Dec. 26	190	228	Feb. 7	3,729
1901	Dec. 2	180	207	Mar. 1	4,694
1902	Dec. 22	158	199¾	Apr. 29	4,917
1903	Oct. 5	95	175	Jan. 14	4,122

260 Chicago Consolidated Traction Company.

4½'s, $—.

Year.	Date low.	Low.	High.	Date high.	Sales.
1899					
1900					
1901					
1902	Feb. 11	67	80	Mar. 27	219,000
1903	Oct. 20	60	70½	Apr. 2	136,000

261 North Chicago Street Railroad Company.

First Mortgage, 5's, 1906 { Total, 1906 & 1909, $3,171,000.

The 1906's are:

Year.	Date low.	Low.	High.	Date high.	Sales.
1899	July 21	105¼	108½	Oct. 27	23,500
1900	Dec. 31	104⅜	105⅛	Dec. 19	16,000
1901	Oct. 4	104	104½	July 3	10,500
1902	Feb. 28	103	103	May 5	31,500
1903	June 4	97	100	Mar. 9	19,000

The 1909's are:

1899					
1900	Nov. 19	105⅞	106¾	May 16	24,000
1901	Oct. 9	106	106½	Aug. 6	19,000
1902	Apr. 2	104	104¼	Feb. 24	11,000
1903	June 5	97	99½	Mar. 26	9,000

262 North Chicago City Railway Company.

4½'s, 2,500,000.

Year.	Date low.	Low.	High.	Date high.	Sales.
1899	Nov. 21	107	109¾	July 14	23,000
1900	Feb. 9	107⅛	108¾	June 5	54,000
1901	Dec. 17	105	108⅛	May 21	53,000
1902	Aug. 1	105	107	Apr. 10	14,000
1903	May 7	98	103	Jan. 29	12,000

263 West Chicago Street Railroad Company, Consolidated.

5's, $6,114,000.

Year.	Date low.	Low.	High.	Date high.	Sales.
1899	Jan. 3	94¾	107½	July 12	2,924,000
1900	Dec. 17	100	104½	Jan. 5	900,000
1901	Dec. 26	98⅞	104½	Apr. 13	749,500
1902	Dec. 11	94	101½	Apr. 4	340,000
1903	Sept. 12	80	97¼	Jan. 14	135,000

264 West Chicago Street Railroad Company.

Debenture 6's, $497,000.

Year.	Date low.	Low.	High.	Date high.	Sales.
1899	Mar. 6	100	102	June 14	158,000
1900	July 19	100	100½	Oct. 30	89,000
1901	Nov. 25	100	100½	Sept. 4	37,000
1902	Sept. 23	99½	100½	May 5	9,000
1903	May 31	87	106	Jan. 13	19,000

265 West Chicago Street Railroad Company.

1st Mortgage, 5's.

Year.	Date low.	Low.	High.	Date high.	Sales.
1899	Apr. 11	109	112	July 13	104,000
1900	Jan. 20	108	111½	June 21	111,000
1901	Dec. 14	109½	111	May 13	123,000
1902	Dec. 29	104½	109½	May 1	141,000
1903	July 23	96	104	Feb. 25	78,000

266 Chicago West Division Railway Company.

4,016,000 4½'s.

Year.	Date low.	Low.	High.	Date high.	Sales.
1899					
1900	Apr. 19	107½	109	Apr. 4	7,000
1901	Oct. 22	108½	110	Mar. 7	6,000
1902	Mar. 24	109½	109½	Nov. 3	5,000
1903	Oct. 1	93	105	Jan. 20	35,000

267 Thirty-eighth. The said Circuit Court erred in admitting and receiving in evidence over the objection and exception of defendants' counsel the testimony of William G. Beale, as follows:—

"I appeared before the State Board of Equalization, and gave to said Board detailed information in reference to the value of the property of the Chicago Edison Company, and handed said Board a pamphlet entitled 'Report of Chicago Edison Company for the fiscal year ending March 31, 1900,' which was offered and received in evidence as Complainant's Exhibit A 10/29/02, H. W. B.; that I compiled the information contained in said report in reference to the value of the capital stock, and the amount of bonded indebtedness. A part of the information I got from direct investigation, and part from public reports, and a part from employing an agent to go out and find the facts.

Thirty-ninth. The said Circuit Court erred in admitting and receiving in evidence over the objection and exception of Defendants' Counsel, the documents marked Complainant's Exhibit A, which document is attached to the bill of complaint in the case of the Chicago Edison Company *vs.* Samuel B. Raymond *et al.*, in the Circuit Court of the United States for the Northern District of Illinois, No. 26,163.

268 Fortieth. The said Circuit Court erred in admitting and receiving in evidence over the objection and exception of defendants' counsel, the document entitled Complainant's Exhibit B, which document is attached to the bill of complaint in the case of the Chicago Edison Company *vs.* Samuel B. Raymond *et al.*, now pending in the Circuit Court of the United States for the Northern District of Illinois, No. 26,163.

Forty-first. The said Circuit Court erred in admitting and receiving in evidence, over the objection and exception of defendants' counsel, the testimony of Arthur D. Wheeler, as follows:

"I appeared before the State Board of Equalization while it had under consideration the proper capital stock assessment for the Chicago Telephone Company for the year 1900, and answered questions and gave information to said Board, concerning the capital stock valuations of said Company. One of the members of the Capital Stock Committee of the Board stated that the Committee could not or would not act until they had received word as to the wishes or ideas of the Court. At about this stage one of the attorneys for the relators in the Mandamus proceeding came into Court with a paper in his hand, and I was ushered out, and fifteen or thirty minutes after that the Committee reported the assessment against the Chicago Telephone Company, which was afterwards accepted by the State Board.

269 Forty-second. The said Circuit Court erred in admitting and receiving in evidence over the objection and exception of defendants' counsel, the following evidence of Fred E. Smith:

"The ordinary operation of a street railroad results in a gradual depreciation of its plant. A charge ought to be made every month on account of such depreciation. Such depreciation in the case of the Chicago Union Traction Company amounts to a little over seven and one half per cent. per annum of the entire value of the property. No such depreciation had been charged against the Chicago Union Traction Company on its books. I have prepared a statement of the income and expenses of the Chicago Union Traction Company for the fiscal year ending June 30, 1900. It is that which I hand you. (Referring to Complainant's Exhibit 1, set forth in the Master's report, filed June 9, 1902.) I have made a compilation upon the lines laid down by Judges Grosscup and Humphrey in their opinion, as to what the taxes would amount to if they were fixed at the rate of 8.035. I capitalized the true net income of -2,057,352.61 upon a six per cent. basis, which resulted in a capitalization of $34,289,210.17. I equalized these on a seven per cent. basis, which produces a capitalization of $24,002,447.12; took one-fifth of this for the assessed value, which was $4,800,489.42. As

computed on the basis of that rate, 8.035 it produces $385,719.32. I then deducted the taxes already paid of $239,097.22, leaving the amount to be paid $146,622.10.

270 Forty-third. The said Circuit Court erred in admitting and receiving in evidence, over the objection and exception of Defendants' counsel, Exhibit Number 1, offered and received in evidence in the case of the Chicago Union Traction Company *vs.* Samuel B. Raymond *et al.* No. 26,609, contained in the Master's Report, filed in said cause, June 9, in the following words:

Chicago Union Traction Company.

Income Account, Year Ending June 30th, 1900.

Income from all sources:

Passenger Receipts	$7,468,797.98	
Chartered Cars	2,122.50	
Mail	6,477.58	
Advertising	33,576.95	
Rent of Land and Buildings	35,622.14	
Rent of Tracks and Terminals	10,000.00	
Interest on Deposits	17,690.11	
Miscellaneous	3,336.03	
Total Income from all sources		$7,577,623.29

Expenses:

Maintenance—Way & Structures	193,666.90	
Maintenance—Equipment	381,082.87	
Transportation	2,836,167.01	
General Expenses	1,119,962.07	
Interest on Loans	41,776.80	
271 Depreciation, being 6% of $9,364,928.57, full value of personal property, said full value being obtained upon the assumption that the Assessors' full valuation of said personal property for the year 1900, to-wit: $6,555,450, was only 70% of real value	561,895.71	
Total Expenses		$5,134,551.36
Net earnings applicable to payment of Bond interest, rentals and taxes		$2,443,071.93
Deducting taxes for 1900, already paid		239,097.22
Leaving net income		2,203,974.71

This amount will be further reduced by the amount of taxes to be paid under the decision rendered by Judges Grosscup and Humphreys."

Forty-fourth. The said Circuit Court erred in admitting and receiving in evidence, over the objection and exception of Defendants' Counsel, oral testimony for the purpose of explaining, varying and contradicting the official acts, records and proceedings of the State Board of Equalization for the years 1900 and 1901, wherein and whereby said Board made the assessment against the property of the complainant sought to be enjoined in this cause.

Forty-fifth. The said Circuit Court erred in refusing and failing to hold that parol evidence was incompetent, for the purpose of explaining, varying or contradicting the official acts, records and proceedings of the State Board of Equalization of the State
272 of Illinois, in reference to the assessments on the capital stock of the complainant, made by the said board in the year 1901, for the year 1900.

Forty-sixth. The said Circuit Court erred, in failing and refusing to hold that inasmuch as complainant contributed to the expense of said Mandamus suit, instituted in the Circuit Court of Sangamon County, Illinois, against the State Board of Equalization of the State of Illinois, for the purpose of compelling said Board to assess the capital stock of the complainant and the other corporations therein named, for the year 1900, and inasmuch as the complainant participated in directing and controlling the conduct of said litigation, therefore the complainant was concluded by the outcome of said suit, and the proceedings of said State Board of Equalization, and the assessment of the Capital Stock of Complainant for the year 1900, made by the said State Board of Equalization of the State of Illinois, in obedience to said writ of Mandamus, and said Circuit Court erred in failing and refusing to hold, that all of the aforesaid proceedings are *res adjudiciata*, and constitute an estoppel by judgment and verdict against the Complainant, conclusively establishing the validity and regularity of the said assessment complained of in the bill of complaint in this cause.

In all of which respects these defendants claim that the aforesaid judgment and decree of said Circuit Court are erroneous,
273 illegal and invalid, and therefore these defendants pray that the said judgment and decree may be reversed, set aside and held for nought.

HARRY A. LEWIS,
WILLIAM F. STRUCKMAN,
JAMES HAMILTON LEWIS, AND
DAVID K. TONE,
Solicitors for the Above-named Defendants.

(Endorsed:) Filed Aug. 10, 1906. Marshall E. Sampsell, Clerk.

274 And on to-wit: the tenth day of August, being one of the days of the regular July term of said Court, 1906, in the record of proceedings thereof in said entitled cause before the Hon. Peter S. Grosscup, Circuit Judge, appears the following entry to-wit:

Order of August 10, 1906, *Allowing Appeal.*

26163.

CHICAGO EDISON COMPANY

vs.

SAMUEL B. RAYMOND, County Treasurer, Cook County, Illinois, and *ex-officio* County Collector, Cook County, Illinois, and JOHN J. HANBERG, His Successor in Office as County Treasurer of Cook County, Illinois, and *ex-officio* County Collector, Cook County, Illinois and *ex-officio* Town Collector of the Town of South Chicago, and MAURICE FITZGERALD, Town Collector of the Town of South Chicago, and THE CITY OF CHICAGO.

Upon motion of David K. Tone, Esq., solicitor for the defendants, and on filing petition for an Order allowing an appeal, together with assignments of errors, it is Ordered that an appeal be and is hereby allowed to the Supreme Court of the United States from the decree entered herein on the twenty-fifth day of July, 1906, and that the amount of the bond upon appeal be and hereby is fixed at the sum of two hundred dollars. Said bond to be approved by the Clerk of this Court.

275 And on to-wit: the fifth day of September, 1906, there was filed in the clerk's office of said Court in said entitled cause a certain Bond on Appeal in words and figures following to-wit:

276 Know all men by these presents, that we, Samuel B. Raymond, County Treasurer of Cook County, Illinois, and *ex-officio* County Collector of Cook County, Illinois, and John J. Hanberg, his successor in office as County Treasurer of Cook County, Illinois, and *ex-officio* County Collector of Cook County, Illinois, and *ex-officio* Town Collector of the Town of South Chicago, Illinois, and Maurice Fitzgerald, Town Collector of the Town of South Chicago, and The City of Chicago, as principal and National Surety Company, as surety, are held and firmly bound unto Chicago Edison Company in the full and just sum of Two Hundred ($200.00) Dollars, to be paid to the said Chicago Edison Company its certain attorney, successors or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly and severally, by these presents. Sealed with our seals, and dated this 30th day of August, in the year of our Lord one Thousand nine hundred and six.

Whereas, lately at a session of the Circuit Court of the United States for the Northern District of Illinois, Eastern Division, on July 25th, A. D. 1906, in a suit depending in said Court, between Chicago Edison Company, complainant, and Samuel B. Raymond, County Treasurer of Cook County, Illinois, and *ex-officio* County Collector of Cook County, Illinois, and John J. Hanberg, his successor in office as County Treasurer of Cook County, Illinois, and *ex-officio* County Collector of Cook County, Illinois, and *ex-officio* Town Collector of

the Town of South Chicago, and Maurice Fitzgerald, Town Collector of the Town of South Chicago, and The City of Chicago, defendants, a decree was rendered against the said defendants above named, restraining them from collecting certain taxes levied against the
277 property of complainant, and the said defendants above named, having obtained an appeal to the Supreme Court of the United States and filed a copy thereof in the Clerk's office of the said Court to reverse the decree in the aforesaid suit,

Now, the condition of the above obligation is such, that if the said Samuel B. Raymond, County Treasurer of Cook County, and *ex-officio* County Collector of Cook County, and John J. Hanberg, successor in office as County Treasurer of Cook County, and *ex-officio* County Collector of the Town of South Chicago, and Maurice Fitzgerald, Town Collector of the Town of South Chicago, and The City of Chicago, shall prosecute their appeal to effect, and answer all damages and costs if they fail to make their plea good, then the above obligation to be void; else to remain in full force and virtue.

S. B. RAYMOND, [SEAL.]
County Treasurer of Cook County and ex-officio County Collector of Cook County, Illinois.

JOHN J. HANBERG, [SEAL.]
Successor to Samuel B. Raymond, as County Treasurer of Cook County, Illinois, and ex-officio County Collector of Cook County Illinois, and ex-officio Town Collector of the Town of South Chicago.

MAURICE FITZGERALD, [SEAL.]
Town Collector of the Town of South Chicago.

[SEAL.] CITY OF CHICAGO,
By E. F. DUNNE, *Mayor.*

Attest:
A. C. ANSON, *City Clerk.*

[SEAL.] NATIONAL SURETY COMPANY,
CHARLES S. CRAIN,
Attorney in Fact.

Approved:
MARSHALL E. SAMPSELL, *Clerk.*

(Endorsed:) Filed Sep. 5, 1906. Marshall E. Sampsell, Clerk.

278 UNITED STATES OF AMERICA,
Northern District of Illinois, Northern Division, ss:

In the Circuit Court of the United States, Northern District of Illinois, Northern Division.

In Chancery. No. 26163.

CHICAGO EDISON COMPANY
vs.
MAURICE FITZGERALD ET AL.

* * * * * * * *

279 2.00 P. M. March 3, 1904, adjourned to new notice.
10.00 April 11, 1904.

Parties met pursuant to notice and adjourned to 10.00 A. M. April 14, 1904.

10.00 A. M. April 14, 1904, adjourned to 2.00 P. M. April 18, 1904.

2.00 P. M. April 18, 1904.

Parties met pursuant to adjournment.

Present:—

On behalf of Complainant: Buel McKeever, Esq., and William H. Arthur, Esq., representing Isham, Lincoln & Beale.

On behalf of defendants: Frank L. Shepard, Esq., and the Attorney General, H. J. Hamlin.

Mr. SHEPARD: In the Chicago Edison Company's case, in behalf of the defendants we offer the following stipulation of facts.

It is agreed by counsel for the respective parties that the following statement with reference to the Chicago Edison Company may be admitted as evidence in this case, subject to any objection that the complainant may have as to its materiality and relevancy, namely:

280 *Stipulation of Facts in re Chicago Edison Company, Covering Amount of Capital Stock Authorized and Issued, Bonded Debt, and Range of Prices of Public Sales of Stock for the Year* 1900.

Capital Stock authorized	$6,000,000
Amount of capital stock paid up	5,971,100
Number of shares actually issued and outstanding	59,711

Number of shares of stock sold on the Chicago Stock Exchange, that being the only place in which public quotations of such stock were given during the year 1900:

1592 shares at a price ranging from $126 to $160 per share, the total number of shares each day and the price per share each day being as follows:

January	5,	5	shares	at 157
	6,	4	"	" 157
	8,	81	"	" 157
	10,	3	"	" 157
	11,	10	"	" 157
	12,	80	"	" 157
	16,	227	"	" 158
	24,	10	"	" 160
	31,	5	"	" 155
February	5,	10	"	" 155
	10,	10	"	" 155
	13,	30	"	" 155
	16,	1	"	" 151
March	15,	15	"	" 150
	16,	100	"	" 153
	16,	25	"	" 151
	19,	50	"	" 151
	20,	1	"	" 150
	23,	60	"	" 151
	23,	10	"	" 150
	24,	48	"	" 150
	28,	2	"	" 152
April	2,	8	"	" 151
	2,	1	"	" 150
	4,	30	"	" 150

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April	6,	50	shares	at 149–½
	7,	100	"	" 149
	9,	1	"	" 149–½
	9,	7	"	" 148–½
	10,	15	"	" 148–½
	10,	2	"	" 148
	18,	20	"	" 143
	21,	10	"	" 143
	25,	4	"	" 141
	27,	20	"	" 140
	27,	3	"	" 143
	30,	2	"	" 143
May	9,	35	"	" 140
	10,	4	"	" 140
	17,	3	"	" 140
	19,	35	"	" 138
	25,	50	"	" 138
	25,	40	"	" 137–½
	25,	50	"	" 138
	25,	10	"	" 139
June	5,	14	"	" 138
	20,	1	"	" 138
	30,	12	"	" 126
July	6,	3	"	" 130

July	25,	15	shares at	134–½
August	14,	16	" "	137–¼
	16,	8	" "	135
October	9,	1	" "	139
	10,	1	" "	140
	10,	2	" "	141
	20,	6	" "	141
	29,	10	" "	139
November	9,	2	" "	140
	9,	10	" "	139
	12,	15	" "	144
December	7,	4	" "	145
	17,	10	" "	150
	17,	43	" "	148
	18,	60	" "	150
	21,	41	" "	150
	26,	8	" "	150
	27,	26	" "	150
	28,	80	" "	150
	31,	5	" "	150
	31,	12	" "	150–¼

Adjourned to 2.00 P. M. Tuesday, April 26, 1904.

282 2.00 p. m., TUESDAY, *April* 26, 1904.

Continuation pursuant to adjournment.

Present:

On behalf of Complainant: Mr. William H. Arthur, representing Isham, Lincoln and Beale.

On behalf of Defendants: Mr. Wilkerson, Mr. Shepard, and Att'y Gen. Hamlin.

Mr. SHEPARD: In the case of the Chicago Edison Company, it is stipulated that the following was the range of prices on the Chicago Stock Exchange for the Chicago Edison Company's stock, namely, from $180.00 per share on July 8, 1901, to $126.00 per share on June 30, 1900; and that only one share was sold at $180.00.

Mr. WILKERSON: We offer in evidence the statement with reference to the Chicago Edison Company appearing on pages 115, 116, 117 and 118, of the Abstract of Record in the case of The State Board of Equalization, *et al., vs.* People of the State of Illinois, etc., already produced by counsel for the Complainant.

I also offer in evidence certified copies of the rules of said Board appearing on pages 186 to 189 inclusive of said Abstract.

283 I also offer in evidence the deposition of A. W. Miller appearing on page 175 of the Abstract, the deposition of Philip Knopf appearing on page 176 of the Abstract, and the statement of the Chicago Edison Company to the State Board of Equalization appearing on pages 205, 271, and 273 of the Abstract.

It is stipulated and agreed by and between the parties hereto that said portions of said record may be treated with the same effect as if

the witnesses themselves were produced and examined in this case, and the original documents themselves produced; the Complainant reserving the right to object on the grounds of irrelevancy or immateriality.

(Said portions of said Abstract thus offered in evidence are in words and figures as follows, to wit:—)

Chicago Edison Company.

Liabilities.

			Capital Stock.
Authorized	$6,000,000.00	Outstanding	$5,971,100.

Bonds.

First mortgage 5 per cent. gold, due July 1, 1926, interest payable April and October at Merchants Loan and Trust Co.....	3,325,000.
Debentures, 6 per cent., due Jan. 1, 1913; interest payable January and July at Merchants Loan and Trust Co.	1,483,000.
	$10,779,100.

284 Dividends: Since 1889 the company has paid 8 per cent. a year, in quarterly dividends payable on the first days of February, May, August and November.

The Capital stock record is as follows:—

At organization, April 29, 1887.....		$500,000.
Increase authorized May 10, 1890.....	$250,000.	
Increase authorized Aug. 20, 1891.....	250,000.	
Increase authorized May 11, 1892.....	500,000.	
Increase authorized Feb. 14, 1893.....	1,500,000.	
Increase authorized Feb. 21, 1894.....	2,000,000.	
Increase authorized June 12, 1899....	1,000,000.	5,500,000.
Total authorized, May 1, 1900.....		$6,000,000.

From organization, the amount of net earnings which would be available for payment of bond interest in each year has been as follows:

Year ending Dec. 31, 1888	$23,621.	Year ending March 31, 1895	$483,665.
Year ending Dec. 31, 1889	51,664.	Year ending March 31, 1896	562,567.
Year ending Dec. 31, 1890	123,123.	Year ending March 31, 1897	599,674.
Year ending Dec. 31, 1891	160,955.	Year ending March 31, 1898	676,525.
Year ending Dec. 31, 1892	327,854.	Year ending March 31, 1899	740,256.
15 mos. ending March 31, 1894	680,777.	Year ending March 31, 1900	812,390.

Earnings.

	1892.	1893–'94.	1894–'95.	1895–'96.	1896–'96.	1897–'98.	1898–'99.	1899-1900.
Gross	$872,665.	$2,141,779.	$1,437,042.	$1,461,084.	$1,548,608.	$1,661,863.	$1,954,877.	$2,133,827.
Op't'g expenses	544,811.	1,461,102.	953,377.	898,517.	948,934.	985,338.	1,214,621.	1,321,437.
Net	327,854.	680,677.	483,665.	562,567.	599,674.	676,525.	740,256.	812,390.
Interest	6,798.	171,934.	155,128.	158,135.	180,334.	226,681.	262,524.	265,243.
Earned on stock	321,056.	508,743.	328,537.	404,432.	419,340.	449,844.	477,732.	547,147.
Dividends	90,000.	219,119.	319,038.	389,382.	397,518.	395,072.	398,072.	398,072.

Fifteen months ending March 21, 1894.

Balance Sheet.

Assets.

	Dec. 31, 1892.	March 31 1894.	March 31, 1895.	March 31, 1896.	March 31, 1897.	March 31, 1898.	March 31, 1899.	March 31, 1900.
Plants, real estate, etc.	$2,019,184.	$6,035,2[illegible].	$7,226,390.	$7,705,517.	$8,630,330.	$9,553,209.	$10,098,421.	$10,817,676.
Work in progress, etc.	141,477.	219,095.	135,959.	109,915.	136,405.	161,549.	180,214.	236,484.
Accounts receivable	199,109.	238,109.	199,422.	190,329.	197,799.	211,110.	237,433.	435,920.
Cash	110,035.	254,286.	207,749.	48,920.	206,541.	86,826.	79,085.	65,261.
Due from stockholders	.....	450,277.						
Open accounts	.....	.....	.....	.....	.....	48,958.		
	$2,469,805.	$7,197,828.	$7,769,520.	$8,054,681.	$9,171,075.	$10,061,152.	$10,595,153.	$11,555,341.

Liabilities.

Capital stock	$1,500,000.	$4,200,000.	$4,947,300.	$4,948,437.	$4,975,900.	$4,975,900.	$4,975,900.	$5,971,100.
Bonds and debentures	130,300.	2,325,300.	2,325,300.	2,503,300.	3,750,000.	4,458,000.	4,808,000.	4,808,000.
Ac'ts and notes payable	364,478.	393,450.	220,918.	304,426.	131,066.	279,213.	332,462.	160,016.
Open accounts	.....	24,818.	12,244.	19,711.	17,842.	.....	51,092.	39,452.
Surplus	475,027.	254,260.	263,758.	278,807.	76,267.	80,039.	101,698.	182,773.
Depreciation reserve	.....	.....	.....	.....	200,000.	240,000.	290,000.	350,000.
Insurance fund	.....	.....	.....	.....	20,000.	28,000.	36,000.	44,000.
	$2,469,805.	$7,197,828.	$7,769,520.	$8,054,681.	$9,171,075.	$10,061,152.	$10,595,153.	$11,553,341.

287 Obligations. The debentures mentioned above are redeemable at the option of the Company, at par and accrued interest on the first day of July or January of any year, upon giving not less that sixty days' notice. The original issue was $2,195,000, of which all but those above shown have been exchanged at par for the first mortgage bonds.

The company guarantees the interest and the principal on $224,000 4 per cent. bonds of Chicago Sectional Electric Underground Company, and the interest, but not the principal on $36,000 5 per cent. bonds of the same company.

The mortgage securing the bonds shown in the table was executed July 1, 1896. It provides for an immediate issue of $3,500,000 bonds, and for additional issues up to a limit of $6,000,000. The mortgage creates a first lien on the company's property and franchise, excepting a piece of property on Indiana avenue and its merchandise. One clause reads:—

The company shall annually expend in repairs and renewals not less than $190,000 and over and above the sum annually expended for repair and renewals in the following years the company shall also credit the following sums to depreciation account $200,000 on or before October 15, 1896. $40,000 March 31, 1898; $50,000 March 31, 1899; $60,000 March 31, 1900; $70,000 March 31, 1901;
288 $80,000 March 31, 1902; $90,000 March 31, 1903; $100,000 March 31, 1904, and $100,000 on the 31st of March in each and every succeeding year so long as any of the bonds secured hereby shall remain unpaid; but the company may charge the actual cost of *bona fide* extensions of its plant and appliances made after September 15, 1896, against the credits of $40,000, $50,000, $60,000, $70,000, $80,000, $90,000 and $100,000 made on the 31st day of March, 1898, 1899, 1900, 1901, 1902, 1903 and 1904 respectively and against the annual credits made in each succeeding year to the full amount of such credit items, but no further.

The bonds are redeemable at par and accrued interest on any interest period after 1910. Issues in addition to the first $3,500,000 bear such rate of interest as the directors decide upon, and may be put out from time to time to cover the costs of extensions.

Property. Owns four central electrical power stations the largest, situated on Harrison Street, being one of the most extensive and complete in the United States. It supplies electric current for light and power within the territory bounded by Thirty-ninth street, Ashland Boulevard, North avenue and the lake, its wires for the most part being carried in underground conduits. The capacity of its power stations is over 20,000 indicated horse power; and the value of the plant, exclusive of good will, was appraised at $6,844,107 in 1896 by experts appointed by the purchasers,
289 of the 5 per cent. bonds. Since that time important extensions and betterments have been made.

History. Organized in 1887 to supply electrical light and power. Holds a perpetual license from the Edison Electric Light Company of New York to use all its present and future patents in consideration of the parent company being given a percentage of all issues of se-

curities representing new capital. The company was originally incorporated as "The Chicago Edison Company," but April 19, 1893, a consolidation with the Chicago Arc Light and Power Company was effected, and the Company was reincorporated as "Chicago Edison Company." The price at which the Chicago Arc Light and Power Company was taken over was $2,195,000, and the debentures were issued for this purpose. The company's relations with the Sectional Electric Underground Company are those of a lessee it having the right to use that company's underground conduits and guaranteeing interest and principal on the 4 per cent. bonds and interest but not principal on the 5 per cent. bonds in consideration of such use. In September, 1897, the company purchased the property formerly owned by the Chicago Illuminating Company, which had a plant on Twenty-first street, between Wabash avenue and State street, and an electric light station on the South side. In 1897 and 1898 various electric lighting concerns doing business outside of the boundaries above described were bought up
290 by interests friendly to the Chicago Edison Company, and in May, 1898, these concerns were consolidated in the Commonwealth Electric Company (which see), thereby putting nearly the entire electric business within the city limits under the same management, Mr. Insull being president of both the Commonwealth and the Edison Company.

Directors. A. F. Seeberger, Robert T. Lincoln, J. J. Mitchell, F. S. Gorton, A. A. Sprague, E. M. Phelps, Byron L. Smith, Lambert Tree, E. L. Brewster, Joseph Leiter, Samuel Insull.

Officers. President, Samuel Insull; Vice-President, R. T. Lincoln; Secretary and Treasurer, F. S. Gorton, Comptroller, W. M.
291 Anthony.

(Rules of State Board of Equalization, pp. 186 to 189.)

Whereas, The fourth clause of section three of "An Act for the assessment of property, and for the levy and collection of taxes," approved March 30, 1872, in force July 1, 1872,—provides as follows:—

3. Fourth. The capital stock of all companies and associations now or hereafter created under the laws of this state, shall be so valued by the State Board of Equalization as to ascertain and determine, respectively, the fair cash calue of such capital stock, including the franchise, over and above the assessed value of the tangible property of such company or association. Said board shall adopt such rules and principles for ascertaining the fair cash value of such capital stock as to it may seem equitable and just; and such rules and principles when so adopted, if not inconsistent with this act, shall be as binding, and of the same effect as if contained in this act, subject, however, to such change, alteration or amendments as may be found from time to time, to be necessary by said board: Provided, that in all cases where the tangible property or capital stock of any company or association is assessed under this act, the shares of capital stock of any such company or association shall not be assessed or

taxed in this clause shall not apply to the capital stock or shares of capital stock or banks organized under the general banking laws of this state, therefore, be it.

292 Resolved, That for the purpose of ascertaining the fair cash value of the capital stock, including the franchise, of all companies and associations now or hereafter created under the laws of this state, and for the assessment of the same, or so much thereof as may be found to be in excess of the assessed or equalized value of the tangible property of such companies and associations respectively, we, the State Board of Equalization, hereby adopt the following rules and principles, viz:

First. The market or fair cash value of the shares of capital stock and the market or fair cash value of the debt (excluding from such debt the indebtedness for current expenses), shall be combined or added together; and the aggregate amount so ascertained shall be taken and held to be the fair cash value of the capital stock, including the franchise, respectively, of such companies and associations.

Second. From the aggregate amount so ascertained as aforesaid, there shall be deducted the aggregate amount of the equalized or assessed valuation of all the tangible property, respectively, of such companies and associations (such equalized or assessed valuation being taken in each case, as the same may be determined by the equalization or assessment of property by this board, and the amount remaining, in each case, if any shall be taken and held to be

293 the amount and fair cash value of the capital stock, including the franchise, which this board is required by law to assess, respectively, against companies and associations, now or hereafter created under the laws of this state.

Resolved, That for the purpose of ascertaining the fair cash value of the capital stock, including the franchise of all companies or associations now or hereafter created under the laws of this state, and for the assessment of the same, or so much thereof as may be found to be in excess of the assessed or equalized value of the tangible property of such companies and -ssociations, respectively, we, the State Board of Equalization, hereby adopt the following rules and

First. The market or fair cash *fair* of the shares of capital stock, principles, viz:—

and the market or fair cash value of the debt, to be determined by reference to the Stock Exchange or the books of said corporations, and the returns made to the State Board, or other means (excluding from such debt the indebtedness for current expenses), shall be combined or added toge-her, and the aggregate amount so ascertained, shall be taken and held to be the fair cash value of the capital stock, including the franchise, respectively, of such companies and associations.

Second. From the aggregate amount ascertained as aforesaid, there shall be deducted the aggregate amount of the equalized or

294 assessed valuation of all tangible property, respectively, of such companies and associations (such equalized or assessed valuation being taken, in each case, if any, shall be taken and held to be the amount and fair cash value of the capital stock, including

the franchise, which this board is required by law to assess, respectively, against companies and associations now or hereafter created under the laws of this state.

Resolved, That for the purpose of ascertaining the fair cash value of the capital stock, including the franchise, of all companies and associations now or hereafter created under the laws of this state, and for the assessment of the same, or so much thereof as may be found to be in excess of the assessed or equalized value of the tangible property of such companies and associations, respectively, we, the State Board of Equalization, hereby adopt the following rules and principles, viz:—

First. The capital stock of each said company or association shall be valued as an entirety, due consideration being given to the following propositions:

a. To the character and duration of the franchise of said company, or association.

b. To the amount of the contribution (if any) demanded of and paid by said company or association under the provisions of any contract or ordinance, to any municipality, as compensation for the use of its franchise privileges in said municipality.

295 *c.* The highest and the lowest quotations of the shares of stock of said company, or association during the twelve months immediately preceding the date of assessment and the number of shares of stock sold at such quotations.

d. Any other fact or condition or circumstance that will assist in arriving at a just, equitable, fair cash value of said capital srock.

Second. From the aggregate amount ascertained as aforesaid, there shall be deducted the aggregate amount of the equalized or assessed valuation of all the tangible property, respectively, of such companies and associations, wherever the same be located (such equalized or assessed valuation of its Illinois property, being taken in each case, as the same may be determined by the equalization or assessment of property by this board), and the amount remaining in each case, if any, shall be taken and held to be the amount and fair cash value of the capital stock, including the franchise, which this board is required by law to assess, respectively, against companies and associations now or hereafter created under the laws of this state.

Third. The above and foregoing are declared to be the only existing rules and principles adopted by this board for its government in the assessment of the capital stock of companies or associations. The yeas and nays being called for, those voting in the affirmative

296 were: Messrs. Barnes, Cadwallader, Cruttenden, Hirsheimer, Leavitt, Long, Martin, McAnsh, McKenna, McKnight, Pierce, Robeson, Rogers, Simon, Severin, Taylor, Wall, and Works,—18 votes. There being no negative votes, the resolution was declared carried.

297 Deposition of A. W. MILLER, called as a witness on behalf of petitioners:

I am a member of the Board of Cook County Assessors. I have been a member of the Board of Cook County Assessors two years and three months. I have seen the printed sheet of the companies mentioned in the petition in this case. My attention was first called to one of these sheets about the 1st of June last year. To the best of my knowledge none of these corporations filed any capital stock schedules with us. That is during the year 1900. All corporations that did not file schedules with our board of assessors, the board made schedule- for them, and all schedules were turned over to the county clerk. I mean the return or statement of capital stock for purpose of capital stock taxation. Returns that we made out, were made out, as far as I can remember, for all of the companies on that list, to the best of my knowledge.

Deposition of PHILIP KNOPF, called as a witness on behalf of petitioner.

I am County Clerk of Cook County; have been County Clerk of Cook County about six years and a half. With reference to the capital stock returns or statements and schedules concerning
298 the twenty-three corporations on the printed list that is being used in this case I sent them to the State Board of Equalization at Springfield, that is all, when they were filed in my office. I have not seen this printed list that is on the table. (List read to witness.) The schedules for them may have been all made, and not any. There are several hundred filed in the office. I don't remember what they were. My office received certain statement- with reference to capital stock from the Board of Assessors, and as to all of those statements and the schedules received by me from the Board of Assessors, I sent them to Springfield. Not only from the Board of Assessors, but from the individual corporations, too, you know; I get some from the corporations outside of the Board of Assessors. I send them to State Board of Equalization. I think I sent them to the auditor. I think he is chairman of the board, *ex-officio* chairman, I think; I ain't sure about that.

Cross-examination:

I received back from the Auditor of Public Accounts of the State certified results of the assessments of corporations made by the State Board of Equalization for the year 1900. And also results of the equalization of assessments made by local assessors. I received these as County Clerk of Cook County; that is the way we spread the taxes. The assessment made by the State Board of Equal-
299 ization of the corporations in Cook County assessed by them and all assessments of property in Cook County.

Mr. GREENACRE: You are making him your witness, you intend to have it that way?

Mr. MILLER: You can save an objection if you want to.

(Objected to as not cross-examination.)

And when I got these certificates or statements of the assessment by the State Board of Equalization and also of the results of the equalization of assessments from the Auditor of Public Accounts. I extended the taxes for the year 1900. And I made the warrants and the books for the collection and delivered them to the collectors as required by law for the taxes 1900.

300 Also statement by Chicago Edison Company, showing:—

Amount of capital stock authorized, $——; number of shares into which said capital stock is divided, ——. The amount of capital stock paid up $——; number of shares actually issued, ——. Market value of the shares of stock, $——; if no market value, then the actual value, $——.

The total amount of all indebtedness, except the indebtedness for current expenses, excluding from such expenses the amount paid for the purchase or improvement of property, $——.

The assessed valuation of lands, $——; of lots, $645,540; personal property, $2,500,000. Total assessed valuation of all tangible property of said company, $3,145,540.

Subscribed and sworn to November 16, 1900, by Walter M. Anthony, comptroller Chicago Edison Company.

301 *Statement by the Chicago Edison Company of Capital Stock, etc., as Required by Sec. 32 for 1899.*

Name of company or association, Chicago Edison Company. Location of company or association, Chicago.

	Amount.
Amount of capital stock authorized	$5,000,000
No. of shares into which said capital stock is divided	
The amount of capital stock paid up	4,975,900
No. of shares actually issued	
Market value of the shares of stock	

If no market value, then the actual value, variable.

The total amount of all indebtedness, except the indebtedness for current expenses, excluding from such expenses the amount paid for the purchase or improvement of property —.

The assessed valuation of lands		
Lots	$1,325,245	
Personal property	2,500,000	
Total assessed valuation of all tangible property of said company		$3,825,245
1/5 thereof being		765,049

302 *Statement by Chicago Edison Company of Capital Stock, etc., as Required by Section 32 for 1898.*

Name of company or association, Chicago Edison Company; location of company or association, Chicago, Illinois.

Principal office or place of business in the —, school district No. — T. — R. —.

Amount of capital stock authorized	$5,000,000
Number of shares into which said capital stock is divided	50,000
The amount of capital stock paid up	4,975,900
Number of shares actually issued	49,759

Market value of the shares of stock, vari-ble.

If no market value, then the actual value, vari-ble.

The total amount of all indebtedness, except the indebtedness for current expenses, excluding from such expenses the amount paid for the purchase or improvement of property —.

The assessed valuation of lands, $—; lots, $174,540; personal property, $50,000. Total assessed valuation of all tangible property of said company $224,540.

303 It is stipulated between the parties that although the taxes were paid in accordance with the valuation fixed in the statement shown on page 205, that statement was erroneous, in that it gave the assessed valuation of lots at $645,540, while the facts was the full valuation of lots was $970,970; and it gave the assessed valuation of personal property at $2,500,000, while the fact was that the full valuation of personal property was $2,000,000; and the word "Assessed" as used in that statement was intended to be *full.*

Adjourned to 2 P. M., Tuesday, May 3, 1904.

2 P. M. Tuesday, May 3, 1904.
Adjourned to 2 P. M., Tuesday, May 10, 1904.

2 P. M. Tuesday, May 10, 1904.
Adjourned to 2 P. M., Tuesday, May 17, 1904.

(Endorsed:) Filed Nov. 19, 1904, Marshall E. Sampsell, Clerk.

304 NORTHERN DISTRICT OF ILLINOIS, *Eastern Division, ss:*

I, Marshall E. Sampsell, Clerk of the Circuit Court of the United States for the Northern District of Illinois, do hereby certify the above and foregoing, consisting of 26 type-written pages to be a true and correct copy of pages numbered from 383 to and including page 407, of the Master's Report filed in said Court on the nineteenth day of November, 1904, in the cause entitled Chicago Edison Com-

pany *vs.* Samuel B. Raymond *et al.*, General Number 26,163, as the same appears from the original Report now remaining in my custody and control.

In testimony whereof, I have hereunto set my hand and affixed the seal of said Court at my office in the City of Chicago, in said District, this 27th day of September, 1906.

[Seal Circuit Court U. S., Northern Dist. Illinois, 1855.]

MARSHALL E. SAMPSELL, *Clerk.*

305 And on to-wit: the twenty-sixth day of September, 1906, there was filed in the clerk's office of said Court in said entitled cause a certain stipulation in words and figures following to-wit:

In the Circuit Court of the United States, Northern District of Illinois, Eastern Division Thereof.

In Chancery. No. 26163.

CHICAGO EDISON COMPANY, Complainant,
vs.
SAMUEL B. RAYMOND, County Collector, ET AL., Defendants.

It is hereby stipulated between Samuel B. Raymond, County Collector, *et al.*, appellants, and Chicago Edison Company, appellee, that a complete transcript of the record in the case of the Chicago Union Traction Company *vs.* Samuel B. Raymond, County Collector, *et al.*, No. 26609, in the Circuit Court of the United States for the Northern District of Illinois, as per præcipe now on file with the Clerk of said Court, shall be filed in the Supreme Court of the United States by counsel for appellants.

And it is further stipulated that the Clerk of said Circuit Court may prepare and transmit to the Clerk of the Supreme Court of the United States at Washington, D. C., the following pleadings, proceedings and papers, which are different in this cause from
306 the corresponding pleadings, proceedings and papers in said cause of the Chicago Union Traction Company *vs.* Samuel B. Raymond *et al.*, No. 26609:

1st. Bill of complaint, filed February 13th, 1902;

2nd. Answer of the defendants, filed June 28th, 1902;

3rd. Master's report, filed June 9th, 1902, together with the depositions of all witnesses filed on said 9th day of June, 1902, and attached to said Master's report, together with all exhibits accompanying the same;

4th. Answer of City of Chicago, filed May 19th, 1906;

5th. Final decree, entered July 25, 1906;

6th. Order entered August 10th, 1906, correcting final decree as of July 25th, 1906;

7th. Petition for appeal and assignment of errors of defendants, filed August 10th, 1906;

8th. Appeal bond of defendants, filed September 5th, 1906;

9th. Testimony taken before the Master, which relates specially to the Chicago Edison Company, including pages 383 to 407, both inclusive, of said testimony.

And, inasmuch as many of the papers, pleadings, proceedings and orders in this cause are identical with the corresponding papers, pleadings, proceedings and orders in said cause of the Chicago Union Traction Company *vs.* Samuel B. Raymond *et al.*,

307 Now, it is hereby further agreed that for the purpose of considering this appeal, the Transcript of the Record in this cause to be used in the Supreme Court of the United States shall consist of the papers, pleadings, proceedings and orders contained in the Transcript of the Record filed in the said cause of the Chicago Union Traction Company *vs.* Samuel B. Raymond, *et al.*, in the Supreme Court of the United States, which it is hereby agreed is identical with the corresponding pleadings, papers, proceedings and orders had in this cause, except in so far as the transcript in this cause has been made up by filing a transcript of the papers, records, proceedings and orders above specifically enumerated. Provided, however, that either party hereto may at any time take up to said Supreme Court by supplemental Transcript of Record, any and all other papers, pleadings, proceedings or orders had in this cause in the said Circuit Court and not above specifically enumerated.

And it is further stipulated that the printed Transcript of the record in this cause may be made up as follows: the pleadings, proceedings and papers in this cause shall be printed in their order, except where such pleadings, proceedings or papers consist of the record filed of the said cause of the Chicago Union Traction Company *vs.* Samuel B. Raymond *et al.*, when, instead of printing the said record in said last mentioned cause in full in the places where the same belongs, reference shall be made to the page in the

308 printed transcript of the record in said cause of the Chicago Union Traction Company *vs.* Samuel B. Raymond *et al.*, on which is printed said corresponding pleading, proceeding or paper, and a complete printed transcript of the record in said cause of the Chicago Union Traction Company *vs.* Samuel B. Raymond *et al.* shall be attached to and bound in with said printed Transcript of the Record in this cause.

CHICAGO EDISON COMPANY,
By ISHAM, LINCOLN & BEALE,
Its Solicitors.

CITY OF CHICAGO, SAMUEL B. RAYMOND, COUNTY COLLECTOR, AND ALL OTHER DEFENDANTS,
By HARRY A. LEWIS,
WM. F. STRUCKMANN,
JAMES HAMILTON LEWIS AND
DAVID K. TONE,
Their Solicitors.

(Endorsed:) Filed Sept. 26, 1906. Marshall E. Sampsell, Clerk.

309 And on to-wit: the twenty-sixth day of September, 1906, there was filed in the clerk's office of said Court in said entitled cause a certain Stipulation extending time to file transcript of record in Supreme Court. Said Stipulation is in words and figures following to-wit:

Stipulation Extending Time to File Transcript of Record.

In the Circuit Court of the United States, Northern District of Illinois, Eastern Division.

No. 26163.

CHICAGO EDISON COMPANY, Complainant,
vs.
SAMUEL B. RAYMOND ET AL., Defendants.

It is hereby stipulated between the parties to the above entitled cause, by their respective counsel, that the defendants and appellants' time for filing a transcript of record in the above entitled cause, in the Supreme Court of the United States, be extended for twenty (20) days, that is, up to and including the 29th day of September, 1906.

ISHAM, LINCOLN & BEALE,
Counsel for Complainant.
HARRY A. LEWIS,
WM. F. STRUCKMANN,
JAMES HAMILTON LEWIS, AND
DAVID K. TONE,
Counsel for Defendants.

(Endorsed:) Filed Sept. 26, 1906, Marshall E. Sampsell, Clerk.

310 NORTHERN DISTRICT OF ILLINOIS, *Eastern Division, ss:*

I, Marshall E. Sampsell, Clerk of the Circuit Court of the United States for the Northern District of Illinois, do hereby certify the above and foregoing to be a true and complete transcript of the proceedings had of record in said court, made in accordance with Stipulation filed in the cause entitled Chicago Edison Company, Complainant *vs.* Samuel B. Raymond, County Treasurer Cook County, Illinois, and *ex-officio* County Collector of Cook County, Illinois, and John J. Hanberg, his successor in office as County Treasurer of Cook County, Illinois, and *ex-officio* County Collector of Cook County, Illinois, and *ex-officio* Town Collector of the Town of South Chicago and Maurice Fitzgerald, Town Collector of the Town of South Chicago and The City of Chicago are defendants, General Number 26,163, as the same appear from the original records and files of said Court now remaining in my custody and control.

In Testimony Whereof, I have hereunto set my hand and affixed the seal of said Court at my office in the City of Chicago, in said District, this 27th day of September, 1906.

[Seal Circuit Court U. S., Northern Dist. Illinois, 1855.]

MARSHALL E. SAMPSELL, *Clerk*.

Endorsed on cover: File No. 20,390. N. Illinois C. C. U. S. Term No. 425. Samuel B. Raymond, county treasurer of Cook county, Illinois, and *ex-officio* county collector of Cook county, Illinois; John J. Hanberg, his successor as such county treasurer and county collector, *et al.*, appellants, *vs.* Chicago Edison Company. Filed October 2d, 1906. File No. 20,390.

IN THE

Circuit Court of the United States

NORTHERN DISTRICT OF ILLINOIS.

Friday, April 25, 1902.

Present, Hon. PETER S. GROSSCUP, Circuit Judge.

CHICAGO EDISON COMPANY		
vs.		BILL.
MAURICE FITZGERALD et al.		

The motion of the complainant for a temporary injunction coming on to be heard upon the bill of complaint, after argument, the court finds that the new assessment made by the State Board of Equalization upon the capital stock and franchise of the complainant in this cause in the year 1901 for the year 1900, was and is illegal and void; but the court determines that the complainant, as a condition of obtaining relief against the collection of any taxes extended upon said illegal assessment, should pay an additional amount of taxes for the year 1900, and for the purpose of ascertaining the amount of such additional taxes to be paid by the complainant for the year 1900, it is or-

dered that this cause be referred to Henry W. Bishop, one of the masters in chancery of this court:

Said master is directed to ascertain and report the amount of said additional taxes upon the following basis:

The full value of the complainant's capital stock and franchise on April 1, 1900, shall be ascertained by capitalizing the true net earnings of complainant, in its fiscal year covering April 1, 1900, upon a ratio or basis of six per cent. (6%), that is to say: said full value shall be taken to be sixteen and two-thirds (16 2/3) times said net earnings. This full value shall be equalized by deducting thirty per cent. (30%) therefrom, and one-fifth (1/5) of said equalized value so ascertained shall be taken as the equalized value upon which complainant should have paid taxes for the year 1900, and upon said amount or equalized assessed value, so ascertained, taxes at the true rate for the year 1900 (exclusive of interest, and penalties), not exceeding eight and thirty-seven hundredths per cent. (8.37%) shall be computed or extended, and from the amount of the taxes so ascertained shall be subtracted the taxes already paid by complainant for the year 1900, and the balance will be the sum to be reported by the master as additional taxes which should be paid by the complainant for the year 1900, as a condition of obtaining equitable relief herein.

It is further ordered that in ascertaining the true net earnings of complainant for its said fiscal year, a deduction from the gross earnings of complainant for that year shall be made of six per cent. (6%) of the value of its tangible personal property in that year, also of the amount of additional taxes for the

year 1900, which should be paid by complainant as ascertained under this order of reference; also of six per cent. (6%) upon the amount of its capital investment in patent rights and licenses; and also of any sum which may have been set aside by the complainant in said fiscal year and credited to an insurance fund on account of its carrying its own insurance, in whole or in part. The amounts of such respective deductions shall appear in the master's report, and the master's report shall further show an alternative calculation without the two last mentioned deductions.

IN THE

Circuit Court of the United States

FOR THE NORTHERN DISTRICT OF ILLINOIS,
NORTHERN DIVISION.

Saturday, June 28, 1902.

Present, HON. PETER S. GROSSCUP, Circuit Judge.

CHICAGO EDISON COMPANY *vs.* **MAURICE FITZGERALD, Town Collector, etc., and SAMUEL B. RAYMOND, County Collector, etc.**	IN CHANCERY.

The exceptions to the master's report filed herein on the ninth day of June, 1902, now coming on to be heard, and the court having heard arguments of counsel thereon, and being advised in the premises, it is ordered that said exceptions be and they are hereby overruled, and that said master's report be and it is hereby confirmed.

And the court having further heard arguments upon the two items of deductions from gross earnings specially covered by the alternative calculation set forth in said master's report, as directed by the order of reference, and having considered said items, it is

ordered that the complainant be allowed and have the benefit of the deduction for investment in patent rights and licenses, but not the deduction for the sum credited to an insurance fund, and that accordingly the amount which the complainant should pay for additional taxes as a condition of obtaining equitable relief herein is Forty-two Thousand Five Hundred Eighty-Six Dollars and Sixty-one Cents ($42,586.61).

And the motion of the complainant for a temporary injunction thereupon coming on to be heard upon the verified bill of complaint, and the master's report, it is ordered that upon the complainant paying the sum of Forty-two Thousand Five Hundred Eighty-six Dollars and Sixty-one Cents ($42,586.61) to the County Treasurer of Cook County, Illinois, ex-officio County Collector, a temporary writ of injunction issue in accordance with the prayer of the bill in this cause.

UNITED STATES OF AMERICA,
NORTHERN DISTRICT OF ILLINOIS,
EASTERN DIVISION. } ss.

I, H. S. Stoddard, Clerk of the Circuit Court of the United States for said Northern District of Illinois, do hereby certify the above and foregoing to be true and complete copies of the order of reference entered in said court on the 25th day of April, A. D. 1902, and of the order entered on the 28th day of June, A. D. 1902, approving the master's report filed June 9, 1902, in the cause wherein the Chicago Edison Company is complainant and Maurice Fitzgerald, *et al.*,

are defendants, as the same appear from the original files and record in said cause now remaining in my custody and control.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court at my office in Chicago, in said District, this 4th day of April, A. D. 1907.

H. S. STODDARD,

(Seal) *Clerk.*

Office Supreme Court, U. S.
FILED.
DEC 11 1906
JAMES H. McKENNEY,
CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, A. D. 1906.

No. 495-116

SAMUEL B. RAYMOND, County Treasurer of Cook County, Illinois, et al.,
Appellants,

vs.

CHICAGO EDISON COMPANY,
Appellee.

Appeal from the Circuit Court of the United States for the Northern District of Illinois.

Motion to Advance and Set Down for Hearing.

HARRY A. LEWIS,
WILLIAM F. STRUCKMANN,
JAMES HAMILTON LEWIS AND
DAVID K. TONE,
Solicitors for Appellants.

Geo. Hornstein Co., Printer, Chicago.

IN THE

SUPREME COURT OF THE UNITED STATES,

OCTOBER TERM, A. D. 1906.

Samuel B. Raymond, County Treasurer of Cook County, Illinois, *et al.*, *Appellants*,
vs.
Chicago Edison Company, *Appellee.*
} No. 425.

MOTION TO ADVANCE AND SET DOWN FOR HEARING.

Now come Samuel B. Raymond, County Treasurer of Cook County, etc., and John J. Hanberg, his successor, etc., and The City of Chicago, appellants in the above entitled cause, and move the court that this cause be taken up out of its order upon the docket of this court and be advanced and set down for hearing on some particular day of this term, to be fixed by this court.

In support of said motion, the said appellants beg leave to submit the following reasons:

First: It appears from the final decree in this cause (Original Record, page 203, a printed copy of which final decree is filed herewith, pages 1 to 5) that the Circuit Court, by said final decree, perpetually enjoined an assessment on the capital stock and franchises of the complainant, made by the State Board of Equalization of the State of Illinois,

and aggregating $1,800,761, and the taxes levied pursuant thereto, and it therefore appears that the proceeding in the court below was one which enjoined the revenue officers of the State of Illinois from collecting an assessment made under the authority of the laws of the State of Illinois.

Second: It appears from the final decree in this cause, above referred to, that a question of momentous importance to the People of the State of Illinois, and a constitutional question of great importance in reference to the jurisdiction of a federal court to enjoin state officials from enforcing the revenue laws of the state is involved in this appeal.

Third: It appears from the final decrees entered in each of the seven causes that were heard together in the court below (printed copies of which final decrees are filed in each of the said respective causes), that all of said causes involve the same questions, and that by the action of the Circuit Court in enjoining the collection of the capital stock assessments made against each of said corporations, respectively, about $2,000,000 of the taxes levied by the State Board of Equalization of the State of Illinois for the year 1901 was perpetually enjoined, and that by reason of the vast sum of money so enjoined, and by reason of the importance of securing a speedy determination of the validity of said assessments, this cause should be advanced and heard out of its regular order.

HARRY A. LEWIS,
WILLIAM F. STRUCKMANN,
JAMES HAMILTON LEWIS, and
DAVID K. TONE,
Solicitors for Appellants.

IN THE

SUPREME COURT OF THE UNITED STATES,

OCTOBER TERM, A. D. 1906.

Samuel B. Raymond, County Treasurer of Cook County, Illinois, *et al.*, *Appellants*, *vs.* Chicago Edison Company, *Appellee.* } No. 425.

NOTICE OF MOTION TO ADVANCE AND SET DOWN FOR HEARING.

To:

ISHAM, LINCOLN & BEALE,
Solicitors for Chicago Edison Company.

Please take notice that on Monday, the 10th day of December, 1906, we shall appear before the Supreme Court of the United States in the City of Washington, D. C., at the opening of court on said day, or as soon thereafter as counsel can be heard, and move that the above entitled cause be taken up out of its order upon the docket of said court and advanced and set down for hearing upon some particular day of this term of said court, to be fixed by said court.

A copy of said motion, embodying the reasons in support thereof, together with a printed copy of

the final decree entered in said cause is herewith handed you, which will be filed with the clerk of said court.

HARRY A. LEWIS,
WILLIAM F. STRUCKMANN,
JAMES HAMILTON LEWIS, and
DAVID K. TONE,
Solicitors for Appellants.

Received a copy of the above notice and of said motion and final decree this ..... day of December, A. D. 1906.

Office Supreme Court, U. S.
FILED.
DEC 11 1906
JAMES H. McKENNEY,
CLERK.

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, A. D. 1906

No. ~~420~~ 716

SAMUEL B. RAYMOND, County Treasurer of Cook County, Illinois, et al.,
Appellants,

vs.

CHICAGO EDISON COMPANY,
Appellee.

COPY OF FINAL DECREE AND OF STIPULATION.

Appeal from the Circuit Court of the United States for the Northern District of Illinois.

In the Circuit Court of the United States,
For the Northern District of Illinois,
Eastern Division.

Chicago Edison Company *vs.* Maurice Fitzgerald, Town Collector of the Town of South Chicago, Samuel B. Raymond, County Treasurer, and City of Chicago.	In Equity. No. 26,163.

DECREE.

Record.

This cause came on to be further heard at this term, and was argued by counsel; and thereupon,
203 upon consideration thereof, it is ordered that all objections and exceptions to the Master's reports be, and the same are hereby overruled, and that the Master's reports and each of them be, and they are hereby approved and confirmed; and the court finds that all the material allegations of the bill of complaint are sustained by the evidence, and that the equities of the case are with the complainant; and thereupon the court doth order, adjudge and decree as follows:

That the assessment made by the State Board of Equalization of the State of Illinois, at its session in 1901, against the complainant, the Chicago Edison Company upon its capital stock for the year 1900 (the net amount of said assessment being $1,800,761.00), was made under the coercive influence of a writ of mandamus issued by the Circuit Court of Sangamon County, in the State of Illinois, and did not represent the real or independ-

ent judgment of the said State Board of Equalization, and that the assessments made by said State Board of Equalization, at its meeting held in 1901, upon the capital stock of the said complainant, and upon the capital stock of the other corporations named in the writ of mandamus above mentioned, for the year 1900, was in fact made upon a materially different basis from that upon which the capital stock of all other corporations of the same class was assessed by the said State Board of Equalization for the year 1900, and also upon a basis materially different from that upon which all other taxable property in the State of Illinois was assessed for the year 1900; that said assessment made in 1901 upon the capital stock of the complainant for the year 1900, was made under the coercive influence of said mandamus without the exercise or application of the judgment of the State Board of Equalization, or the members thereof, to the ascertainment of the value of said capital stock, and without the State Board of Equalization, either in fact or in form, taking into consideration the basis upon which all other taxable property in the State of Illinois was assessed and taxed for the year 1900, and without in fact or in form equalizing the valuation or assessment of the capital stock of said complainant for the year 1900 with all or any of the assessments made upon the other taxable property in the State of Illinois for the year 1900, with the result that the said assessment upon the capital stock of complainant, made in the year 1901 for the year 1900, was made on a much higher basis than that upon which the other taxable property of the State of Illinois was assessed and taxed for

the year 1900; that said State Board of Equalization did not take into consideration the fact that a portion of the complainant's capital stock was invested in rights and licenses under United States patents and was therefore not taxable by or under authority of the laws of the State of Illinois but said portion of the complainant's capital stock was included in said assessment; that said assessment upon said capital stock for the year 1900 was and is unjust and inequitable; that the making of said assessment as aforesaid in 1901, upon the capital stock of the said complainant, and the extension of taxes thereon, and the attempt to enforce the payment of such taxes so extended, from complainant, was and is a violation of the Fourteenth Amendment to the Constitution of the United States, and that the attempt to enforce the collection from complainant of the taxes extended on said reassessment will, unless restrained, result in a multiplicity of suits, and in irreparable injury to the complainant.

An order was entered herein on the 28th day of June, 1902, as a condition precedent to the granting of the temporary relief prayed for in the bill of complaint herein, that complainant should pay, in addition to the tax already paid upon the first or original capital stock assessment for the year 1900, the further sum of $42,586.61, making a total capital stock tax to be paid by the complainant for the year 1900 of $69,779.36, which is found and decreed by the court to be all that complainant should equitably be required to pay as a capital stock tax for the year 1900. Said additional sum of $42,586.61 has been paid by complainant to the County Treasurer of Cook County, in compliance with said order,

making the total amount paid by complainant, as taxes upon its capital stock for the year 1900, the said sum of $69,779.36.

It is therefore further ordered, adjudged and decreed that the said assessment of $1,800, 761, on the capital stock of complainant, made by the State Board of Equalization in the year 1901 for the year 1900, and all taxes levied and extended thereon, and now spread upon the books of the tax collecting agencies in the City of Chicago, County of Cook and State of Illinois, for collection, be and they are, and each of them is, illegal, null and void, and that the defendants, Maurice Fitzgerald, Town Collector of the Town of South Chicago, and his successor and successors in office, as such town collector, and the defendant, Samuel B. Raymond, County Treasurer of Cook County, Illinois, and *ex-officio* County Collector of said county, and his successor and successors in office, as such county treasurer and *ex-officio* county collector, and the defendant, the City of Chicago, and each of them, and each and every of their respective agents, deputies, servants, attorneys and representatives be, and they are, and each of them is, hereby perpetually enjoined and restrained from in any wise levying or collecting, or in any manner attempting, directly or indirectly, to levy or collect, or to enforce against the complainant, or against any of its property, said tax or taxes or any or either of them, or any part thereof.

It is further ordered, adjudged and decreed that the costs of this cause be taxed against complainant.

P. S. Grosscup.

IN THE CIRCUIT COURT OF THE UNITED STATES,
NORTHERN DISTRICT OF ILLINOIS,
EASTERN DIVISION THEREOF.

Chicago Edison Company, *Complainant,*
vs.
Samuel B. Raymond, County Collector, *et al.*, *Defendants.*
In Chancery No. 26,163

IT IS HEREBY STIPULATED between Samuel B. Raymond, County Collector, *et al.*, appellants, and Chicago Edison Company, appellee, that a complete transcript of the record in the case of the Chicago Union Traction Company *vs.* Samuel B. Raymond, County Collector, *et al.*, No. 26609, in the Circuit Court of the United States for the Northern District of Illinois, as per præcipe now on file with the clerk of said court, shall be filed in the Supreme Court of the United States by counsel for appellants.

AND IT IS FURTHER STIPULATED that the clerk of said Circuit Court may prepare and transmit to the clerk of the Supreme Court of the United States at Washington, D. C., the following pleadings, proceedings and papers which are different in this cause from the corresponding pleadings, proceedings and papers in said cause of the Chicago Union Traction Company *vs.* Samuel B. Raymond *et al.*, No. 26609:

1st. Bill of complaint, filed February 13, 1902;

2nd. Answer of the defendants, filed June 28, 1902;

3rd. Master's report, filed June 9, 1902, together with the depositions of all witnesses filed on said 9th day of June, 1902, and attached to said Master's re-

port, together with all exhibits accompanying the same;

4th. Answer of City of Chicago, filed May 19, 1906;

5th. Final decree, entered July 25, 1906;

6th. Order entered August 10, 1906, correcting final decree as of July 25, 1906;

7th. Petition for appeal and assignment of errors of defendants, filed August 10, 1906;

8th. Appeal bond of defendants, filed September 5, 1906;

9th. Testimony taken before the Master, which relates specially to the Chicago Edison Company, including pages 383 to 407, both inclusive of said testimony.

AND, inasmuch as many of the papers, pleadings, proceedings and orders in this cause are identical with the corresponding papers, pleadings, proceedings and orders in said cause of the Chicago Union Traction Company *vs.* Samuel B. Raymond *et al.*

NOW, IT IS HEREBY FURTHER AGREED that for the purpose of considering this appeal, the transcript of the record in this cause to be used in the Supreme Court of the United States shall consist of the papers, pleadings, proceedings and orders contained in the transcript of the record filed in the said cause of the Chicago Union Traction Company *vs.* Samuel B. Raymond *et al.*, in the Supreme Court of the United States, which it is hereby agreed is identical with the corresponding pleadings, papers, proceedings and orders had in this cause, except in so far as the transcript in this cause has been made up by filing a transcript of the papers, records, proceedings and orders above specifically enumerated. PRO-

VIDED, however, that either party hereto may at any time take up to said Supreme Court by supplemental transcript of record, any and all other papers, pleadings, proceedings or orders had in this cause in the said Circuit Court and not above specifically enumerated.

AND IT IS FURTHER STIPULATED that the printed transcript of the record in this cause may be made up as follows: the pleadings, proceedings and papers in this cause shall be printed in their order, except where such pleadings, proceedings or papers consist of the record filed of the said cause of the Chicago Union Traction Company *vs.* Samuel B. Raymond *et al.*, when, instead of printing the said record in said last mentioned cause in full in the places where the same belongs, reference shall be made to the page in the printed transcript of the record in said cause of the Chicago Union Traction Company *vs.* Samuel B. Raymond *et al.*, on which is printed said corresponding pleadings, proceeding or paper, and a complete printed transcript of the record in said cause of the Chicago Union Traction Company *vs.* Samuel B. Raymond *et al.* shall be attached to and bound in with said printed transcript of the record in this cause.

CHICAGO EDISON COMPANY,
By ISHAM, LINCOLN & BEALE,
Its Solicitors.

CITY OF CHICAGO, SAMUEL B. RAYMOND, COUNTY COLLECTOR, AND ALL OTHER DEFENDANTS,

By HARRY A. LEWIS,
WILLIAM F. STRUCKMANN,
JAMES HAMILTON LEWIS, and
DAVID K. TONE,
Their Solicitors.

IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1906.

No. 425

SAMUEL B. RAYMOND, County Treasurer of Cook County, Illinois, and *ex officio* County Collector of Cook County, Illinois; JOHN J. HANBERG, his Successor as such County Treasurer and County Collector et al.,

Appellants,

vs.

CHICAGO EDISON COMPANY.

Appeal from the Circuit Court of the United States for the Northern District of Illinois.

APPELLANTS' BRIEF.

STATEMENT OF THE CASE.

On the 13th day of February, 1902, appellee filed its bill of complaint (Trans., 2) against Samuel B. Raymond, County Treasurer of Cook County, Illinois, and ex-officio County Collector of said county, and Maurice Fitzgerald, Town Collector of the Town of South Chicago, in said county, seeking to enjoin said officials from enforcing against appellee a certain tax levied pursuant to an assessment made

upon the capital stock and franchises of appellee, by the State Board of Equalization of the State of Illinois on the the 22nd of November, 1901, as and for the first of April, 1900.

The appellee was a corporation engaged in generating, selling and distributing electric current in the City of Chicago, on the first day of April, 1900.

The statutes of the State of Illinois provide that a County Board of Assessors, consisting of three persons, shall assess the tangible property of corporations doing business within the State of Illinois; and the Illinois law further provides that the capital stock and franchises of corporations pursuing the kind of business that appellee was engaged in shall be assessed by the State Board of Equalization. The members of the said State Board of Equalization in assessing the capital stock and franchises of corporations act as original assessors.

Said Board is also charged with the duty of equalizing the value of real and personal property between the several counties, after said values have been certified by the State Auditor to the county officers. All assessments made by said Board as original assessors, are certified to the county officials, and used as the basis of extending the taxes against the corporation so assessed, on the amount so certified.

Appellee was required, under the laws of the State of Illinois, to deliver to the county assessors, for the year 1900, a statement showing the market value, or if no market value then the actual value, of its shares of stock. This statement was to be forwarded to the State Board of Equalization and used by said Board in making an assessment of the capital stock and franchises of appellee. Appellee made out a statement, which was duly forwarded to the State

Board, but that statement (Trans., 159) contained no information in reference to either the market value or the actual value of appellee's shares of stock.

The Illinois law also provided that if the corporation failed to make out a statement, it should be the duty of the county assessors to make out a schedule getting the information called for from the best obtainable sources.

The State Board met for its annual session September 11, 1900, but took no steps towards assessing the capital stock and franchises of appellee. On November 10, 1900, the State's Attorney of Sangamon County filed a petition for a mandamus on the relation of certain taxpayers, in the Circuit Court of said county, against said State Board of Equalization, alleging that said Board wilfully neglected and refused, during the year 1899, to assess the capital stock and franchises of appellee, and numerous other corporations in said petition named, and that said Board claimed and pretended that it would, at its then session, also refuse to assess the capital stock and franchises of said corporations, or would assess the same at such a figure as to produce a mere nominal tax. Said petition set forth the market value of said stock and that the same was well known to said Board, and said petition prayed that a writ of mandamus might issue, directing said Board to make an assessment of the capital stock and franchises of appellee.

On December 3, 1900, said State Board of Equalization adjourned, and on that day said Board, for the purpose of defeating the prosecution of said mandamus suit, made a mere nominal assessment of the capital stock and franchises of appellee. Said assessment was certified to the County Clerk, and

the taxes extended pursuant thereto paid before said mandamus suit was tried.

During the month of April, 1901, said mandamus suit was tried in the Circuit Court, and on the first of May, 1901, a judgment was entered by that court awarding a writ of mandamus as prayed for in said petition.

An appeal was taken from said judgment by the State Board, and on the 24th day of October, 1901, the Supreme Court of Illinois handed down an opinion affirming said judgment. (*The State Board of Equalization* v. *People*, 191 Ill., 528.) The Supreme Court of Illinois held that the assessment of the capital stock and franchises of appellee made by the Board on December 3, 1900, was so grossly inadequate that it was for that reason fraudulent and void.

Thereafter the mandate of the Supreme Court was duly filed in the Circuit Court, and on the 2d day of November, 1901, there issued a writ of mandamus against the members of the State Board of Equalization, commanding them to assess the capital stock and franchises of the appellee and certain corporations therein named, and in obedience to said writ of mandamus, the said State Board of Equalization, on the 22d of November, 1901, made an assessment, amounting to the sum of $1,800,761.00, on the capital stock and franchises of appellee as and for the first day of April, 1900; the taxes amounting to the sum of $141,719.89 were duly extended by the County Clerk on said assessment, and this bill of complaint is filed to enjoin the collection of said taxes, and the enforcement of said assessment.

The various allegations of appellee's bill of complaint, stripped of unnecessary verbiage, amount to

this: That the Constitution and Laws of the State of Illinois require uniformity and equality in the assessment of all property within the state, and that the State Board of Equalization, in violation of those constitutional and statutory provisions, made an assessment upon the capital stock and franchises of appellee that was unequal, discriminating and unfair, and that the above result was brought about in the following manner:

First. The assessment of other property in the state, including that of railroad and telegraph companies and other corporations for the year 1900, as finally equalized by the State Board of Equalization, did not exceed 1/5 of 70 per cent of its cash value, whereas the capital stock and franchises of appellee and the other corporations that were made defendants to said mandamus suit were assessed at 1/5 of their full cash value.

Second. That the assessment of the capital stock and franchises of appellee and the other corporations above named was excessive, unreasonable and much higher than the assessments made upon the property of other persons and corporations for the same year.

Third. That the assessment of the capital stock and franchises of appellee, made by the State Board on December 3, 1900, and the payment in January, 1901, of the taxes extended pursuant to said assessment, constituted a full discharge by the appellee of all taxes that could be levied under the laws of the State of Illinois against its capital stock and franchises.

Fourth. That the members of the State Board of Equalization, in making the assessment complained of, did not exercise their own independent judgment, but believed that they were coerced by the writ of

mandamus of the Circuit Court, into making the assessment, for the amount and in the manner returned.

By reason of the foregoing proceedings, it was charged in the bill of complaint that the appellee was deprived of its property without due process of law, and denied the equal protection of the law, in violation of the 14th amendment.

A demurrer was filed to appellee's bill of complaint, which demurrer was overruled by the court, and subsequent thereto the defendants filed their answer (Trans., 50), admitting that the assessment was made and the taxes extended pursuant thereto as alleged in appellee's bill of complaint, but denying specifically all charges of fraud, illegality, inequality and discrimination. A replication was filed to said answer and the case was thereafter heard upon proof offered by the respective parties before Master in Chancery Bishop of said court. (C. U. T. Co. Trans., 98.)

On the 19th day of May, 1906, the City of Chicago filed an intervening petition alleging that it was the beneficial owner of the greater portion of the taxes here in controversy, and asking that it be made a party to this cause, and that it be permitted to file an answer, and thereafter (C. U. T. Co. Trans., 1267) an order was entered granting the prayer of said petition.

A vast amount of evidence was taken before the Master in behalf of the appellee, but an examination of this record will disclose that all of that evidence, in so far as it was material to the issues in this case, may be classified under the following subdivisions:

1. The testimony of four out of twenty of the members of the State Board of Equalization, who

made the assessments complained of in reference to the operation of their own minds at the time the assessments were made.

2. Certain extracts from the reports of the Railroad and Warehouse Commissioners for the State of Illinois and the reports of the Board of Agriculture of the State of Illinois.

3. Certain extracts from the records of the Union Stock Yards and Transit Company in reference to the value of horses, cattle and hogs within the State of Illinois, and certain extracts from Brown's Directory of American Gas Companies, both of said publications being private compilations.

4. A statement purporting to show the number of horses, cattle and hogs in the State of Illinois, returned for taxation in the year 1900 by the local assessors, as compared with the number purported to be shown in the state by the United States Census Report of 1890; and certain statements purporting to show the aggregate assessments and the total value of the property assessed in the State of Illinois and Cook County from 1873 to 1900.

5. The records of the proceedings of the State Board of Equalization showing the assessments made on the capital stock and franchises of the corporations above named during the years 1899, 1900 and 1901, and certain extracts from the records of the Board for prior years.

6. The testimony of the officers and agents of the complainant corporations in reference to the amounts and values of their properties in the City of Chicago on the 1st day of April, 1900.

The first four items of evidence above quoted were received in evidence over the objection of appellants' counsel.

On the 25th day of April, 1902, when the applica-

tion of appellee for a preliminary writ of injunction came on to be heard, the court entered an order (C. U. T. Co. Trans., 3), that the capital stock and franchises of appellee should be assessed by capitalizing the true net income of appellee for the fiscal year covering April 1, 1900, upon a basis of six per cent, and ordered said cause referred to a Master, and directed said Master to ascertain the amount of additional tax to be paid by appellee pursuant to said plan.

The Master filed a preliminary report (Trans., 57), in which said Master reported that appellee should pay $41,336.61 in addition to the tax previously paid, said sum to be in full of all taxes to be paid by appellee upon its capital stock and franchises for the year 1900.

On November 19, 1904, the Master filed his final report in this case (C. U. T. Co. Trans., 97), in which he found that the material allegations of complainant's bill had been proved, and that no further taxes were due from appellee under the plan of assessment promulgated by the Circuit Court.

To that report exceptions were duly filed and thereafter said cause came on to be heard before the court, and on the 25th of June, 1906, the Circuit Court handed down an opinion (C. U. T. Co. Trans., 1277), in which he held that the material allegations of appellee's bill of complaint had been proved; that the payment theretofore made of $41,336.61 was all the taxes that appellee should pay and that all of the appellants be perpetually enjoined from collecting or attempting to collect the balance of said taxes, amounting to the sum of $73,190.53.

From that decree an appeal was prayed by the appellants to this court.

Appellants' various assignments of errors have

been classified in the specifications of errors under four subdivisions:

I. The Circuit Court erred in refusing to dismiss this cause for want of jurisdiction.

II. The Circuit Court erred in admitting incompetent evidence in behalf of appellee and in refusing to hold that there was no competent evidence tending to prove the allegations of appellee's bill of complaint.

III. The Circuit Court erred in refusing to hold that appellee had not made out a case entitling it to relief in a court of equity.

IV. The Circuit Court erred in enjoining the collection of the taxes in question without requiring appellee to pay $73,190.53 in addition to the amount already paid.

The various assignments of error will be considered in our argument under the same subdivisions.

SPECIFICATIONS OF ERRORS.

I.

The Circuit Court erred in refusing to dismiss this cause for want of jurisdiction.

First: The said Circuit Court erred in failing and refusing to dismiss this cause for want of jurisdiction in a Federal Court, appearing upon the face of complainant's bill of complaint.

Second: The said Circuit Court erred in failing to dismiss complainant's bill of complaint for want of jurisdiction because the undisputed evidence in this record shows that a Circuit Court of the United States is without jurisdiction to hear and determine the matters and things charged in complainant's bill.

Third: The said Circuit Court erred in refusing

to hold that the allegations of the complainant's bill of complaint show that the complainant has not been denied by the State of Illinois or its officers, any right, privilege or immunity guaranteed to the complainant by the Fourteenth Amendment to the Constitution of the United States.

Fourth: The said Circuit Court erred in refusing to hold that the allegations of complainant's bill of complaint show that the complainant has not been deprived of its property without due process of law, in violation of the Constitution of the United States.

Fifth: The said Circuit Court erred in refusing to hold that the State of Illinois had not denied to the complainant the equal protection of its laws within its jurisdiction.

Sixth: The said Circuit Court erred in refusing to find that the sole grievance complained of in complainant's bill of complaint is that the officers of the State of Illinois charged with the duty of making a fair and equal assessment of the complainant's capital stock, have made an assessment that is unfair and unequal, contrary to and in violation of the Constitution and the Laws of the State of Illinois; and said Circuit Court likewise erred in assuming and retaining jurisdiction of this cause, when, upon the face of complainant's bill of complaint, it appears that the said Circuit Court was without jurisdiction.

Seventh: The said Circuit Court erred in refusing to hold that inasmuch as the complainant and defendants were all citizens of and residents of the State of Illinois, a Federal Court had no jurisdiction in this cause to hear and determine the fairness, equality or regularity of the assessment made against the complainant, and the said Circuit Court erred in refusing to dismiss this cause for want of jurisdiction.

II.

The Circuit Court erred in admitting incompetent evidence in behalf of appellee and in refusing to hold that there was no competent evidence tending to prove the allegations of appellee's bill of complaint.

Ninth: The said Circuit Court erred in overruling the objections and exceptions and each and every of said objections and each and every of said exceptions to the said Master's reports and to each of them.

Tenth: The said Circuit Court erred in approving and confirming the Master's reports and each of them, filed in this cause.

Eleventh: The said Circuit Court erred in failing and refusing to sustain the objections and each and every of the same filed by the defendants to said Master's reports and to each of said reports.

Twelfth: The said Circuit Court erred in finding that all of the material allegations of the bill of complaint are sustained by the evidence and likewise in finding that the equities of the case are with the complainant.

Thirteenth: The said Circuit Court erred in failing to find that the material allegations of the bill of complaint in this cause have not been proved by any competent evidence.

Fourteenth: The said Circuit Court erred in finding that the assessment made by the State Board of Equalization of the State of Illinois, at its session in 1901 against the complainant, upon its capital stock for the year 1900, amounting to $1,800,761, was made under the coercive influence of a writ of mandamus issued by the Circuit Court of Sangamon County, in the State of Illinois, and did not repre-

sent the real or independent judgment of the said State Board of Equalization.

Fifteenth: The said Circuit Court erred in failing and refusing to find that the assessment, amounting to $1,800,761 made by the State Board of Equalization of the State of Illinois at its session in 1901 against the complainant, upon its capital stock for the year 1900, was made by the said State Board of Equalization in the exercise of its own judgment and upon its official responsibility.

Sixteenth: The said Circuit Court erred in finding that the assessments made by the State Board of Equalization at its meeting, held in 1901, upon the capital stock of said complainant and upon the capital stock of the other corporations for the year 1900, named in the writ of mandamus, issuing from the Circuit Court of Sangamon County, Illinois, were in fact made upon a materially different basis from that upon which the capital stock of all other corporations of the same class were assessed by the State Board of Equalization for the year 1900, and also upon a basis materially different from that upon which all other taxable property in the State of Illinois was assessed for the year 1900.

Seventeenth: The said Circuit Court erred in refusing and failing to find that the only competent evidence contained in the record in this cause showed that the assessments made by the State Board of Equalization at its meeting held in 1901 upon the capital stock of said complainant, and upon the capital stock of the other corporations for the year 1900, named in the writ of mandamus issuing from the Circuit Court of Sangamon County, Illinois, were in fact made upon the same or a similar basis as that upon which the capital stock of all other corporations of the same class were assessed

by the State Board of Equalization for the year 1900, and also that said assessments as to each of said corporations were made upon the same or a similar basis upon which all other taxable property in the State of Illinois was assessed for the year 1900.

Eighteenth: The said Circuit Court erred in finding that said assessment made in 1901 on the capital stock of complainant, was made under the coercive influence of a writ of mandamus, issuing from the Circuit Court of Sangamon County, Illinois, without the exercise or application of the judgment of the State Board of Equalization or the members thereof, to the ascertainment of the value of said capital stock and without the State Board of Equalization, either in fact or in form, taking into consideration the basis upon which all other taxable property in the State of Illinois was assessed and taxed for the year 1900 and without in fact or in form equalizing the valuation or assessment of the capital stock of said complainant for the year 1900 with all or any of the assessments made upon the other taxable property in the State of Illinois for the year 1900, with the result that said assessment made on the capital stock of the complainant, in the year 1901 for the year 1900, was made on a much higher basis than that upon which the other taxable property of the State of Illinois was assessed and taxed for the year 1900.

Nineteenth: The said Circuit Court erred in finding that the said State Board of Equalization of the State of Illinois did not take into consideration the fact that a portion of the complainant's capital stock was invested in rights and licenses under United States patents and was therefore not taxable by or under authority of the laws of the State of Illinois,

but said portion of the complainant's capital stock was included in said assessment.

Twentieth: The said Circuit Court erred in failing and refusing to find that there was no competent evidence that any portion of complainant's capital stock that was invested in rights and licenses under United States patents, had been taxed or assessed by the said State Board of Equalization of the State of Illinois.

Twenty-first: The said Circuit Court erred in refusing and failing to find that the assessment made in the year 1901 on the capital stock of the complainant, was made without any coercion and in the exercise of the independent judgment of the State Board of Equalization and the members thereof, for the purpose of ascertaining the fair value of the capital stock of said complainant, and that said assessment was obtained and resulted from the said State Board of Equalization equalizing the valuation or assessment of the capital stock of said complainant for the year 1900 with all of the assessments made upon other taxable property in the State of Illinois, and that the assessment so arrived at was just and fair to the said complainant.

Twenty-second: The said Circuit Court erred in finding that the making of the assessment for the year 1900 upon the capital stock of said complainant, and the extension of the taxes thereon, and the attempt to enforce the payment of the taxes so extended, from complainant, was and is a violation of the Fourteenth Amendment to the Constitution of the United States.

Forty-fourth: The said Circuit Court erred in admitting and receiving in evidence, over the objection and exception of defendants' counsel, oral testimony for the purpose of explaining, varying

and contradicting the official acts, records and proceedings of the State Board of Equalization for the years 1900 and 1901, wherein and whereby said Board made the assessment against the property of the complainant sought to be enjoined in this cause.

Forty-fifth: The said Circuit Court erred in refusing and failing to hold that parol evidence was incompetent, for the purpose of explaining, varying or contradicting the official acts, records and proceedings of the State Board of Equalization of the State of Illinois, in reference to the assessments on the capital stock of the complainant, made by the said Board in the year 1901, for the year 1900.

Twenty-fifth: The said Circuit Court erred in admitting and receiving in evidence over the objection and exception of defendants' counsel, the following testimony of Samuel M. Barnes, a member of the State Board of Equalization, of the State of Illinois, for the years 1900 and 1901:—

I heard the members of the State Board of Equalization discuss the remarks of the court on the application for an extension of time to make return to the writ of mandamus. My recollection of one remark that I heard was that it was a mere question of the Board's getting their pencils and getting to work and they ought to do it. I heard one of the Board say that the court was very vituperative in this matter. I think it was either Mr. Schaefer or Mr. Hopkins of the Committee on the Board who was over there listening to the court. The impression I got was very strongly fixed in my mind and it was that his attitude was intensely hostile to the Board and I was told by those who heard him that it was in the shape of a roast from start to finish as far as his manner was concerned. Of course, I cannot just quote the language he used, but rather

his manner I was told was vituperative, absolutely so. I was told this by members of the State Board of Equalization who were present and heard the remarks of the judge. The reassessment as we determined it, was made with a view to satisfying the court, the order of the court. We made no deduction, if I remember rightly, on account of that all of these companies but two had in 1900 been assessed upon their capital stock. We did not take into consideration the fact, if it was a fact, that other property in the state had not been assessed at the maximum more than 70 per cent of its value. The court, in his discussion, gave an illustration of the manner in which the assessment should be made and I think he made an example of the Gas Company here; in any event one of the companies he made an example of that and in that example he said just how the assessment should be made and as this was an order of the court, we followed that example that he gave in a general way, for all these assessments. Mr. Smith and Mr. Greenacre furnished these tables (referring to complainant's Exhibit A, 10/23/03), said document being a compilation of the value of the capital stock of said companies, prepared by Miss Goggin and Miss Haley, as members of the Teachers' Federation. Our desire in making this reassessment was in order to satisfy the Circuit Court of Sangamon County, because it was not my judgment that it was a proper assessment. The general idea seemed to be with the committee on capital stock that the action of the committee was dictated by the court. It was discussed between the committee on capital stock at about the time the reassessment was reported to the Board and the first object to be attained was to satisfy the court. The assessments that were made subsequent to this as-

sessment of 1900 were based on what we believed to be the law and in a general way on the judgment of the members, that is on the real value. The assessment for 1901 we regarded as representing our real judgment and the other we did to satisfy the court. The restraining order issued by the court was dissolved on the 22nd of November and I think it was a very short time after that on that day that we made our return to the writ.

Twenty-sixth: The said Circuit Court also erred in admitting in evidence, over the objection of defendants' counsel, the testimony of Frank P. Martin, a member of the State Board of Equalization, which was in substance the same as the testimony of said Barnes.

Twenty-seventh: The said Circuit Court erred in receiving in evidence, over the objection of defendants' counsel, the testimony of John S. Cruttenden, a member of the State Board, which was in substance the same as the testimony of said Barnes.

Twenty-eighth: The said Circuit Court erred in receiving in evidence, over the objection of defendants' counsel, the testimony of Louis D. Hirsheimer, a member of the State Board of Equalization, which was in substance the same as the testimony of said Barnes.

Thirtieth: The said Circuit Court erred in receiving in evidence, over the objection of the defendants, the report of the Railroad and Warehouse Commissioner of the State of Illinois for the year 1900, and the report of the Commissioner of Agriculture of the State of Illinois for the same year, and Brown's Directory of American Gas Companies.

Thirty-fourth: The said Circuit Court erred in admitting in evidence, over the exception of defend-

ants, the statement, being Ward Exhibit C, purporting to show live stock returned for taxation in 1900 by local assessors as compared with live stock according to the U. S. Census returns.

III.

The Circuit Court erred in refusing to hold that appellee had not made out a case entitling it to relief in a court of equity.

Twenty-fourth. The said Circuit Court erred in ordering, adjudging and decreeing that the assessment of $1,800,761 on the capital stock of complainant, made by the State Board of Equalization in the year 1901 for the year 1900, and all taxes levied and extended thereon and now spread upon the books of the tax collecting agencies in the City of Chicago, County of Cook and State of Illinois, for collection, are, and each of them is, illegal, null and void, and that the defendants Samuel B. Raymond, County Treasurer of Cook County, Illinois, and ex-officio County Collector of Cook County, Illinois, and Maurice Fitzgerald, Town Collector of the Town of South Chicago, in said county, and John J. Hanberg, his successor as County Treasurer of Cook County, Illinois, and ex-officio County Collector of said county, and ex-officio Town Collector of the Town of South Chicago, in said county, and his successor and successors in office as such County Treasurer and ex-officio County Collector and ex-officio Town Collector of said Town of South Chicago, and the defendant, Maurice Fitzgerald, Town Collector of the Town of South Chicago, and the defendant, the City of Chicago, and each of them and each and every of their respective agents, deputies, servants, attorneys

and representatives, be and are perpetually enjoined and restrained from in any wise levying or collecting, or in any manner attempting, directly or indirectly, to levy or collect or to enforce against the complainant or against any of its property, said tax or taxes, or any or either of them, or any part thereof.

IV.

The Circuit Court erred in enjoining the collection of the tax in question.

Twenty-third: The said Circuit Court erred in entering the order on the 28th day of June, 1902, to the effect that the complainant should pay, in addition to the tax already paid, upon the first or original capital stock assessment for the year 1900, the further sum of $42,586.61, making a total capital stock tax to be paid by complainant for the year 1900 of $69,779.36, which was found and decreed by the court to be all that complainant should equitably be required to pay as a capital stock tax for the year 1900, for said Circuit Court should have found, if it had jurisdiction of this cause and of the parties hereto, that the complainant should be required to pay the aggregate amount of all taxes assessed against it in the year 1901 as and for the year 1900 upon its capital stock, aggregating $1,800,761.

Twenty-fourth: The said Circuit Court erred in ordering, adjudging and decreeing that the assessment of $1,800,761 on the capital stock of complainant, made by the State Board of Equalization in the year 1901 for the year 1900, and all taxes levied and extended thereon, and now spread upon the books of the tax collecting agencies in the City of Chicago, County of Cook and State of Illinois, for collection, are and each of them is illegal, null and

void, and that the defendants Samuel B. Raymond, County Treasurer of Cook County, Illinois, and ex-officio County Collector of Cook County, Illinois, and Maurice Fitzgerald, Town Collector of the Town of South Chicago, in said county, and John J. Hanberg, his successor as County Treasurer of Cook County, Illinois, and ex-officio County Collector of said county, and ex-officio Town Collector of the Town of South Chicago in said County, and his successor and successors in office as such County Treasurer and ex-officio County Collector and ex-officio Town Collector of said Town of South Chicago, and the defendant, Maurice Fitzgerald, Town Collector of the Town of South Chicago, and the defendant, the City of Chicago, and each of them, and each and every of their respective agents, deputies, servants, attorneys and representatives, be and are perpetually enjoined and restrained from in anywise levying or collecting, or in any manner attempting, directly or indirectly, to levy or collect, or to enforce against the complainant, or against any of its property, said tax or taxes, or any or either of them, or any part thereof.

BRIEF OF ARGUMENT.

I.

THE CIRCUIT COURT ERRED IN REFUSING TO DISMISS THIS CAUSE FOR WANT OF JURISDICTION.

(a) Equality and uniformity of taxation is not a right guaranteed by the Federal Constitution.

(b) Where the ministerial officers of a state, contrary to the constitution and laws of that state, deprive a person of his property, without due proc-

ess of law, no federal question is presented, for their acts will not be imputed to the state, but in such a case it will be presumed that the courts of the state will give full relief.

(c) The session of the State Board was public, and appellee had an opportunity to be present and be heard. This constituted due process of law.

II.

THE CIRCUIT COURT ERRED IN ADMITTING INCOMPETENT EVIDENCE IN BEHALF OF APPELLEE AND IN REFUSING TO HOLD THAT THERE WAS NO COMPETENT EVIDENCE TENDING TO PROVE THE ALLEGATIONS OF APPELLEE'S BILL OF COMPLAINT.

(a) The testimony of the individual members of the State Board in reference to the operation of their minds at the time they made the assessment complained of was incompetent.

(b) The extracts from the report of the Railroad and Warehouse Commissioners and the Board of Agriculture were incompetent.

(c) The figures taken from the books of the Union Stock Yards and Transit Company and Brown's Directory of American Gas Companies were incompetent.

(d) The alleged discrepancy between the Census Report and the Assessors' returns with reference to the amount of live stock within the State of Illinois, during the year 1900, did not prove any issue in this case.

(e) The records of the State Board did not sustain the allegations of appellee's bill.

(f) The testimony of the officers of appellee in reference to the value of its property on April 1, 1900, did not make out a case.

III.

THE CIRCUIT COURT ERRED IN REFUSING TO HOLD THAT APPELLEE HAD NOT MADE OUT A CASE ENTITLING IT TO RELIEF IN A COURT OF EQUITY.

(a) If the re-assessment complained of was void and illegal because the Board had exhausted its power in making the first assessment, then appellee had an adequate remedy at law, for it could have paid the void assessment and then have recovered the money back.

(b) Overvaluation of property by an assessing body, unaccompanied with fraud or bad faith, furnishes no ground for equitable intervention.

(c) Appellee was guilty of *laches* and iniquity, and has not offered to do equity.

IV.

THE CIRCUIT COURT ERRED IN ENJOINING THE COLLECTION OF THE TAX IN QUESTION WITHOUT REQUIRING APPELLEE TO PAY $73,190.53, BEING THE AMOUNT NOW DUE IN ADDITION TO THE TAX ALREADY PAID.

(a) The Circuit Court erred in assessing appellee upon its alleged net income instead of upon the fair market value of its capital stock.

(b) There was no competent evidence tending to show the net income of appellee.

ARGUMENT.

I.

THE CIRCUIT COURT SHOULD HAVE DISMISSED THIS CAUSE FOR WANT OF JURISDICTION.

The Constitution of the State of Illinois (Sec. 1, Art. 9) guarantees to persons and corporations within the State equality and uniformity of taxation. The statutes of the State of Illinois enacted pursuant thereto provide (Sec. 108, Hurd's Revised Statutes, 1899, p. 1412) that the State Board of Equalization shall assess the capital stock and franchises of corporations at its fair cash value.

It will be observed that the foregoing statutory and constitutional provisions imposed upon the State Board of Equalization the duty of assessing the capital stock and franchises of corporations at its fair cash value in precisely the same way that all other property throughout the state is assessed.

The Supreme Court of Illinois has repeatedly held that it is the duty of the assessing officers of the State of Illinois to carry out the constitutional and statutory provisions in reference to uniformity and equality of taxation.

The Circuit Judge in his opinion (C. U. T. Co. Trans., 1297) held that the failure of the State Board of Equalization to carry out the constitutional and statutory provision above quoted, guaranteeing equality and uniformity of taxation, constituted a violation of the 14th Amendment, and gave a Circuit Court of the United States jurisdiction of this cause regardless of the citizenship of the parties.

An examination of the decisions of this court will plainly demonstrate that the Circuit Judge was in error in his fundamental assertion in this case, that

any substantial departure from the laws of the State of Illinois, on the part of the officers of the State of Illinois, in levying and collecting taxes, constituted the taking of property, without due process of law, in violation of the Federal Constitution.

A.

The law is well settled by the decisions of this court that equality and uniformity of taxation is not a right guaranteed by the Federal Constitution.

The following are a few of many decisions of this court laying down the above rule:

State Railway Tax Cases, 92 U. S., 575, 618.
Davidson v. *Board of Admrs. of New Orleans,* 96 U. S., 97.
Kelly v. *City of Pittsburgh,* 104 U. S., 78.
Merchants & Manufacturers Nat. Bank v. *Pennsylvania,* 167 U. S., 461-4.
Henderson Bridge Co. v. *City of Henderson,* 173 U. S., 592.
Magoun v. *Ill. Trust & Sav. Bank,* 170 U. S., 283, 293, 295.
Connolly v. *Union Sewer Pipe Co.,* 184 U. S., 540, 562.
State of Missouri ex rel. Hill v. *Dockery,* 191 U. S., 165, 170.
Travelers Ins. Co. v. *Connecticut,* 185 U. S., 364, 371.
See also Brief in *C. U. T. Co.* case, p. 39.

Should we, however, concede that equality and uniformity of taxation is guaranteed under the 14th Amendment, appellee's bill of complaint does not make out a case giving the Circuit Court jurisdiction, for the alleged wrongful acts of the State Board of Equalization were not the acts of the state within the meaning of the 14th Amendment.

B.

Where the constitution and the laws of a state are just and fair and the sole grievance of which a party complains is that the officers of the state, charged with executing those laws, have deprived that party of his property, contrary to the constitution and the laws of the state, and in violation of the terms thereof, no federal question is presented, for, under the above circumstances, it will be presumed that the state courts will give full relief against the illegal and unauthorized acts of the officers of the state.

The above proposition is sustained by the following authorities:

Strauder v. *West Virginia*, 100 U. S., 303.
Virginia v. *Rives*, 100 U. S., 313.
Civil Rights Cases, 109 U. S., 3.
Kentucky v. *Powers*, 201 U. S., 1.
Barney v. *City of New York*, 193 U. S., 430.
Manhattan Railway Company v. *City of New York*, 18 Fed., 195.
Coulter v. *Louisville & N. R. Co.*, 196 U. S., 599.
See also Brief in *C. U. T. Co.*, p. 46.

C.

Equally untenable is the claim in appellee's bill of complaint that under the circumstances there described the appellee was deprived of its property without due process of law, because it had no opportunity to be heard at the time the assessment complained of was levied against it.

The time and place of the sessions of the State Board of Equalization were fixed by law, those sessions were public, and the appellee had an oppor-

tunity to be present and be heard. Such a proceeding constitutes due process of law.

Michigan S. R. R. Co. v. *Powers,* 201 U. S., 245, 301.

Public Clearing House Co. v. *Coyne,* 194 U. S., 497.

II.

THERE IS NO COMPETENT EVIDENCE IN THIS RECORD TENDNG TO SUSTAIN THE MATERIAL ALLEGATIONS OF APPELLEE'S BILL OF COMPLAINT WITH REFERENCE TO THE ASSESSMENT COMPLAINED OF.

We will take up each of the items of evidence offered by appellee before the Master and show that that evidence was incompetent and should be disregarded by this court.

A.

The testimony of the individual members of the State Board of Equalization in reference to the operation of their minds at the time they made the assessment complained of was incompetent and should have been excluded by the Circuit Court.

Four out of the twenty members of the State Board of Equalization, that made the assessment complained of, were called to the witness stand before the Master by the appellee, and they testified in substance, that they did not equalize the assessment of appellee's property with the assessments made upon other property throughout the state for the same year, and that they put down what they believed the State Circuit Court wanted them to put down.

By this means they were permitted to contradict their official acts, as evidenced by the record of the

State Board. This evidence was incompetent and should have been excluded.

Wright v. *City of Chicago*, 48 Ill., 285.
Quick v. *Village of River Forest*, 130 Ill., 323-325.
Ryder Estate v. *City of Alton*, 175 Ill., 94.
Republic Life Ins. Co. v. *Pollak*, 75 Ill., 292.
Fayerweather v. *Ritch*, 195 U. S., 276.
Coulter v. *Louisville & N. R. Co.*, 196 U. S., 599.
Brief, *C. U. T. Co.*, p. 79.

B.

The extracts from the report of the Railroad and Warehouse Commissioners and the Board of Agriculture of the State of Illinois were incompetent.

In order to make a public record competent evidence of the facts therein recited, two things are necessary: First, that the fact therein recited is required by law to be reported by the official; second, that the person recording the fact must have had personal knowledge of the matters he was registering at the time.

The above reports do not conform to either of said requirements, and were therefore incompetent.

Hegler v. *Faulkner*, 153 U. S., 109.
Chaffee v. *U. S.*, 18 Wall., 516.
Swift v. *State of New York*, 89 N. Y., 52.
Brief, *C. U. T. Co.*, p. 92.

C.

The figures taken from the books of the Union Stock Yards and Transit Company and from Brown's Directory of American Gas Companies were not competent evidence and should have been excluded.

The above publications were private compilations, and the witness who produced said figures admitted that he had no knowledge as to whether the figures were correct. Under the above circumstances the publications should have been excluded.

State v. *Daniels*, 44 New Hampshire, 383.

Richardson Bros. & Co. v. *Stringfellow*, 100 Ala., 416, 418.

Langley v. *Smith*, 3 New York St. Rep., 276.

See also authorities cited in *C. U. T. Co.* Brief, p. 102.

D.

The alleged discrepancy between the United States Census Report and the Assessors' return with reference to the amount of live stock within the State of Illinois during the year 1900 does not tend to prove any fact in this case.

Live stock could be assessed and at a different rate and in a different manner than the property of street railroads, gas, telephone and electric light companies, without infringing on the right guaranteed by the Federal Constitution.

E.

The records of the State Board of Equalization do not sustain any of the allegations of appellee's bill.

Appellee offered in evidence certain resolutions contained in the minutes of proceedings of the State Board of Equalization for certain years prior to

1893, to the effect that in the opinion of the Board the real and personal property of the state during the years in question had been assessed at less than its full cash value.

Prior to 1898 assessors were required to value property at its fair cash value. By the terms of the Act of July 1st, 1898, assessors were required to set down in one column the full value of real and personal property and in another column one-fifth of said full value, which latter sum should be the assessed value. This statute was enacted for the very purpose of doing away with the practice of undervaluing property which it is claimed had existed prior thereto. Evidence of undervaluations prior to the Act of 1898 does not tend to prove the existence of undervaluations thereafter.

Coulter v. *Louisville & N. R. Co.*, 196 U. S., 599.

III.

APPELLEE HAS NOT MADE OUT A CASE ENTITLING IT TO RELIEF IN A COURT OF EQUITY.

A.

If the contention of appellee be well taken, namely, that the reassessment of 1900 was void and illegal because the Board had exhausted its powers in making the first assessment, then appellee had an adequate remedy at law, for it could have paid the void assessment and then have recovered the money back.

Shelton v. *Platt*, 139 U. S., 591.

Allen v. *Pullman Pal. Car Co.*, 139 U. S., 658.

Pacific Express Co. v. *Seibert*, 142 U. S., 339.

B.

Overvaluation of property by an assessing body unaccompanied with fraud or bad faith furnishes no ground for equitable intervention.

There are many general allegations in appellee's bill, but when those allegations are reduced to their lowest terms, the whole bill (aside from the claim that the second assessment was void) is that the property of the appellee was assessed at a higher proportionate amount than was the property of other persons and corporations throughout the State of Illinois for the same year. The above allegations are insufficient to justify relief in a court of equity.

Pittsburgh C. C. & St. L. R. Co. v. *Backus,* 154 U. S., 421, 434.

Maish v. *Territory of Arizona,* 164 U. S., 599, 611.

C.

Before a court of equity will grant an injunction to restrain the collection of a tax on the ground of excessive valuation and unfair discriminations on the part of the assessors, complainant must distinguish by his bill the legal from the illegal part of the tax, and must actually pay the tax which is due; otherwise he is not entitled to relief.

Albuquerque Nat. Bk. v. *Perea,* 147 U. S., 87.

State Railway Tax Cases, 92 U. S., 575, 616.

National Bank v. *Kimball,* 103 U. S., 733.

IV.

THE UNDISPUTED EVIDENCE SHOWS APPELLEE OUGHT TO PAY $73,190.53 MORE THAN IT WAS REQUIRED TO PAY BY THE ORDER OF THE CIRCUIT COURT.

Even if we assume that the Circuit Court had jurisdiction of this cause, that the appellee has estab-

lished the allegations of its bill by competent evidence, that the reassessment for the year 1900 was illegal and void, and that the Circuit Court had the power to make a reassessment, then appellee was only entitled to the following relief:

First, to receive credit for the $27,192.75 paid on the original assessment; second, to have its capital stock and franchises assessed at 70 per cent of its actual cash value instead of at 100 per cent, which latter sum it is claimed the State Board of Equalization used as the basis for its assessment.

The rules of the State Board of Equalization under which all other corporations were assessed for the year 1900, required that the market value or fair cash value of the corporation's shares of stock should be added to its debt (excluding indebtedness for current expenses) and that the aggregate should be the fair cash value of the capital stock and franchises of such corporation.

The above method of assessment was the one directed to be made by the writ of mandamus of the Circuit Court, and has been held to be the proper method of assessing capital stock and franchises of Illinois corporations under the very statute now in question.

State Board of Equalization v. *People*, 191 Ill., 528.

State Railroad Tax Cases, 92 U. S., 575.

The Circuit Court ignored the fair cash value of the stock of appellee, and capitalized the alleged net income at six per cent (taking such net income from certain lump sums shown by the company's books) and by these means placed so insignificant a valuation upon the capital stock and franchises of appellee that it was permitted to escape the payment of the greater share of its tax for the year 1900.

The Circuit Court, in arriving at the amount of the additional tax to be paid by appellee for the year 1900, followed the computation made by the Master; the Master in turn adopted the figures and method of computation furnished to him by the Company's experts.

We have presented three tables below numbered respectively (1), (2) and (3). Table (1) showing the computation made by the Master, which was approved by the Circuit Court; Table (2) showing the amount of taxes due under the rules of the State Board of Equalization, which were approved by this court in the *State Railroad Tax Cases, supra,* and Table (3) showing the tax still remaining due and unpaid on appellee's own theory, that 1/5 of 70 per cent of the full value of the capital stock and franchises of the appellee should be used instead of the full value, which it is claimed the State Board took. (Trans., 73.)

(1)

Net income, as shown by statement from company's books	$ 682,263.28
Capitalized at 6%	11,371,054.66
Equalized at 70%	7,959,738.26
1/5 for assessed value	1,591,947.65
Extending tax at .0787	125,286.28
Deducting tax already paid	83,949.67
Leaving to be paid under the decision of the United States Circuit Court	$ 41,336.61

Making an assessment of the capital stock of said corporations in accordance with the rules approved by this court in the *State Railroad Tax Cases, supra,* we would get the following result:

(2)

Capital stock valued, equalized as required by law	$ 9,003,805.00
1/5 valuation upon which taxes are to be extended	1,800,761.00
Extending tax at .0787	141,719.89
Deduct tax paid on original assessment	27,192.75
Leaves	$ 114,527.14
Deduct tax assessed by U. S. Cir. Ct.	41,336.61
Tax yet due	$ 73,190.53

The above assessment is made by taking one-fifth of the full value of the capital stock and franchises of the above corporations.

Should we assume that appellee's contention be sound, that one-fifth of 70 per cent of the full value of the capital stock and franchises of the appellee should be taken, then we get the following results:

(3)

Full value of capital stock, including franchise (C. U. T. Trans., 242)	$12,271,875.00
70% of that amount	8,590,312.50
1/5 of that amount, to make assessed value	1,718,062.50
Deduct equalized assessed value of tangible property (C. U. T. Co. Trans., 242)	653,614.00
Leaves net assessed value of capital stock	$ 1,064,448.50
Extend tax at .0787	83,772.10
Deduct tax paid on original assessment	27,192.75
Leaves	$ 56,579.35

Deduct tax paid by order of U. S. Cir. Court		41,336.61
Leaves tax remaining unpaid on complainant's own theory of equalizing the full value of the capital stock by taking one-fifth of 70 per cent of the same.	$	15,242.74

It appears from the foregoing figures that if the Circuit Court had followed the method of assessment approved by this court in the *Railroad Tax Cases, supra,* then even after equalizing the full value by taking one-fifth of 70 per cent, the appellee would have been required to pay $73,190.53 more than it was ordered to pay by the Circuit Court.

There are many other inaccuracies in the court's method of computation, which have been fully pointed out in the brief filed in the *Chicago Union Traction Company* case, to which reference is here made for a full discussion of the question. (Brief, *Chicago Union Traction Company,* p. 127.)

C.

The decree of the Circuit Court was also inequitable and unfair in that it permitted the appellee to pay the additional taxes of $41,336.61 on July 1, 1902, without paying any interest on the same.

Taxies levied for the 1st of April, 1900, became delinquent under the laws of the State of Illinois on the 1st of May, 1901, and taxes thereafter remaining unpaid drew interest at the rate of 1 per cent a month. Appellee, by failing to furnish any statement to the State Board of Equalization, of the value of its capital stock and franchises, and by assisting said board in attempting to maintain the

first assessment which was expressly held by the State Supreme Court to be fraudulent and void, is legally responsible for the delay in the making of the second assessment. Now, that the appellee has invoked the aid of a court of equity, it should be required to do equity. Equity requires that appellee pay its just burden of taxes and interest at the rate of 5 per cent on that amount from the time it should have been paid to the collecting officers. Appellee had the use of that money from the 1st of May, 1901, up till July 1, 1902, and no reason has been or can be suggested why it should not reimburse the state in that regard.

JAMES HAMILTON LEWIS,
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DAVID K. TONE,
Special Counsel for said City;
HARRY A. LEWIS,
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WILLIAM F. STRUCKMANN,
Assistant County Attorney of said County;
WILLIAM H. STEAD,
Attorney General of the State of Illinois;
GEORGE B. GILLESPIE,
Special Assistant Attorney General of said State;
Solicitors for Appellants.

Office Supreme Court, U. S.
FILED.
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JAMES H. McKENNEY,
CLERK.

IN THE

Supreme Court of the United States.

OCTOBER TERM, A. D. 1906.

No. 425 116

SAMUEL B. RAYMOND, County Treasurer, et al.,

vs.

CHICAGO EDISON COMPANY.

Appeal from the Circuit Court of the United States for the Northern District of Illinois.

ARGUMENT OF WILLIAM G. BEALE FOR APPELLEE.

WILLIAM G. BEALE,
GILBERT E. PORTER,
BUELL McKEEVER,
WALDO F. TOBEY,
Of Counsel for Appellee.

BUNTHORP-WARREN PRINTING CO., CHICAGO

IN THE

Supreme Court of the United States.

OCTOBER TERM, A. D. 1906.

No. 425

SAMUEL B. RAYMOND, County Treasurer, et al.,

vs.

CHICAGO EDISON COMPANY.

Appeal from the Circuit Court of the United States for the Northern District of Illinois.

STATEMENT.

(1) THIS CASE INVOLVES FUNDAMENTALLY THE QUESTION WHETHER, AFTER A CAPITAL STOCK ASSESSMENT HAS BEEN FORMALLY MADE AGAINST A DOMESTIC CORPORATION WHICH HAS FURNISHED ALL REQUIRED INFORMATION, AND AFTER THE TAX THEREON HAS BEEN EXTENDED AND PAID, A STATE BOARD OF EQUALIZATION UNDER STATE STATUTORY PROVISIONS CALLING FOR NO NOTICE WHATEVER, AND IN OBEDIENCE TO A WRIT OF MANDAMUS ISSUED BY A STATE CIRCUIT COURT AND APPROVED BY A STATE SUPREME COURT IN PROCEEDINGS TO WHICH THE CORPORATION WAS NOT A PARTY, AND IN WHICH IT WAS IN FACT DENIED A HEARING, MAY, UNDER THE "DUE PROCESS" CLAUSE OF THE FOURTEENTH

AMENDMENT TO THE FEDERAL CONSTITUTION LAWFULLY MAKE A NEW AND LARGER CAPITAL STOCK ASSESSMENT AGAINST THE CORPORATION, IGNORING THE FORMER ONE, AND ALSO THE TAX PAID UNDER IT, AND INCLUDING IN THE SECOND ASSESSMENT CAPITAL STOCK REPRESENTING A LARGE INVESTMENT IN PATENT RIGHTS AND LICENSES.

(2) THE CASE ALSO INVOLVES THE FUNDAMENTAL QUESTION WHETHER UNDER A STATE CONSTITUTION AND LAWS REQUIRING PROPORTIONATE AND UNIFORM TAXATION THE ACTION OF A STATE BOARD OF EQUALIZATION ASSESSING IN LITERAL OBEDIENCE TO SUCH WRIT OF MANDAMUS THE PROPERTY OF A SMALL NUMBER OF DOMESTIC CORPORATIONS UPON A RADICALLY DIFFERENT BASIS AND RULE OF VALUATION FROM THAT APPLIED FOR THE SAME YEAR TO ALL OTHER CORPORATIONS OF THE SAME CLASS IN THE STATE DOES NOT DENY TO THE FEW CORPORATIONS SO ASSESSED THE EQUAL PROTECTION OF THE LAWS GUARANTEED BY THE 14TH AMENDMENT TO THE FEDERAL CONSTITUTION.

In the main, the fundamental facts of this case and the principles of law applicable to it are the same as in the case of *Raymond, County Treasurer, et al.*, v. *Chicago Union Traction Company*, No. 424 of this term, but there are two special circumstances which distinguish and strengthen it, namely: the express denial of a hearing to appellee in the State Supreme Court in the *mandamus* proceeding (*Union Traction Rec.*, printed page 180); and the inclusion in the reassessment of capital stock representing the investment of appellee in patent rights and licenses (*Rec.*, 17, 47; *Union Traction Rec.*, 146-7). The record was intended to contain only pleadings and other matters

relating specially to this case as distinct from the Union Traction and other cases brought here at the same time, and involving the same questions except as to the patent taxation; for one main record to cover matters common to all the cases was prepared in the Union Traction case by stipulation. (Rec., 161.) It is probable that some duplication appears in the records, and also it does not appear that the preliminary order of reference of April 25, 1902, or the order of June 28, 1902, confirming the master's preliminary report of June 9, 1902, and ordering a preliminary payment as a condition of receiving relief is in either this record or the Union Traction record. These two orders will be supplied by a supplemental transcript to be filed pursuant to the stipulation.

To the argument for appellee in the Union Traction case reference is made for an extended statement of the facts.

The Circuit Court found from its own examination of the evidence reported by the master that the material allegations of the bill were sustained by the evidence (Rec., 113, 116), and the master upon a general reference "to take proofs and to report the evidence and his conclusions of fact," also reported to the same effect. (Union Traction Rec., 97, 98.) Shortly stated, the bill alleged, in substance, among other things, that a capital stock assessment for the year 1900 was made against appellee by the Illinois State Board of Equalization in the usual course of procedure, and after full information furnished to the board by appellee as to its property, its shares of capital stock and its indebtedness (Rec., 5, 179-80, 302); that a tax to the

amount of over $27,000 was regularly extended upon this assessment, and was, in due time, regularly paid by appellee; that subsequently the State Board of Equalization, after more than half of its constituent membership had changed by an intervening election, made an entirely new capital stock assessment against appellee for the year 1900, ignoring the former one and ignoring the tax paid under the former one; that a tax to the amount of over $141,000 had been extended against appellee under the second assessment; that to this tax the County Clerk of Cook County, under supposed authority of Section 276 of the Illinois General Revenue Law, had added an amount of over $7,000 as a penalty for alleged failure on the part of appellee to pay its capital stock tax for 1900 in due time; that the total amount of over $148,000 was demanded of appellee by the Tax Collector of the Town of South Chicago, Fitzgerald, under a warrant then in his hands; that this second assessment had resulted from certain *mandamus* proceedings against the Board of Equalization in the Circuit Court of Sangamon County, and in the Supreme Court of Illinois, to which appellee was not a party and in which it had no right to be heard; that the first assessment had never been vacated in any proper judicial proceeding legally effective against appellee; that the making of the new assessment and the attempted collection of the tax under it constituted a taking of appellee's property without due process of law, in violation of the Fourteenth Amendment to the Constitution of the United States; that as a result of the *mandamus* proceeding the Board of

Equalization was compelled to select, and did select, a few corporations, including appellee, out of the great body of similar corporations in the State of Illinois, and to assess them on an entirely different basis from that applied to the other similar corporations, whereby appellee was deprived of the equal protection of the laws, in violation of the Fourteenth Amendment to the Constitution of the United States, and was subjected to disproportionate taxation, contrary to the Constitution of the State of Illinois; that the first assessment against appellee had exhausted the power of the State Board of Equalization to make an assessment against appellee; that the second assessment was void; and that the collection of taxes extended under it would be a taking of appellee's property without due process of law.

It was further alleged that, if not entirely void, the second assessment was, nevertheless, excessive by reason of making no allowance for the previous assessment and for the taxes paid thereunder and by reason of including in the second assessment the value of a part of its capital stock to the amount of over $670,000 invested in patent rights or licenses under United States patents, which patent rights or licenses the State of Illinois had no authority to tax; that the tax extended upon such part of appellee's capital stock invested in patent rights or licenses amounted to $10,560; that under supposed duress of the writ of *mandamus* the Board of Equalization had failed to exercise its independent judgment and discretion, and in particular had failed to equalize the second assessment by an appropriate reduction to

make it reasonably uniform with the assessments judged by the board to have been made against other property in the state generally, whereby appellee was subjected to a greater burden of taxation than other persons and corporations on their property in Cook County and throughout the State of Illinois, in violation of the Fourteenth Amendment to the Constitution of the United States and also in violation of the Constitution of the State of Illinois; and that the penalty of $7,000 imposed by the county clerk had been imposed without authority of law and should be abated.

It was further alleged in the bill that as the taxes on the original assessment had been paid by appellee without protest, appellee could not recover them in an action at law; that appellee could not set off those taxes in an action at law brought against appellee for the taxes under the new assessment; that many of the illegalities and defects of the new assessment did not appear on the face of the record of the proceeding of the Board of Equalization nor on the face of the tax books, and must be shown by evidence *aliunde;* that such evidence *aliunde* would not be competent evidence in defense of an action at law to enforce the collection of the taxes; that unless the taxes were paid the Town Collector would be authorized and required to enforce collection by distraining upon and selling the goods and chattels of appellee; that appellee's property consisted largely of personal property, constituting an extensive electric lighting and power system furnishing light and power to many thousand customers in different parts of the City of Chicago, so that a levy of said taxes by distress and sale would

interfere with the operation of appellee's electric lighting and power system, embarrass and injure appellee's customers, and subject appellee to the danger of losing the property levied upon without any opportunity to test its rights by interposing any defense; that if under compulsion and threat of distraint appellee should pay the taxes complained of and bring an action at law against the Town Collector to recover them, it would be unable to recover from him because he did not possess sufficient property to satisfy the judgment it might obtain; that after payment of the taxes the collector would be bound to distribute them to numerous taxing bodies, and if appellee were compelled to institute actions against the taxing bodies a multiplicity of suits would inevitably be required; that the City of Chicago would be entitled to receive the larger portion of the taxes so paid; that said city might be able to defeat appellee in any attempted recovery from it by interposing as a defense to any action at law the fact of its having already exceeded its constitutional limitation of indebtedness, thereby rendering void any expressed or implied contract for the return of the money received by it; that the portion of the taxes which, if paid, would go to the State of Illinois, could not be collected back by appellee by any legal proceeding whatever; that, even if it were possible to collect back from all the taxing bodies the taxes paid, such recovery would not include the costs and commissions incurred in the collection of the taxes; that the collection of the taxes would inflict an irreparable injury upon appellee; and that appellee had had no adequate and complete remedy at law.

Appellee offered to pay whatever amount, if any, the court might think ought equitably to be paid by appellee, and prayed that the collection of the tax be permanently enjoined. A temporary injunction was granted on condition that appellee pay the further sum of $42,586.61, which amount was seasonably paid. The final decree (Rec., 113) found that this was a sufficient payment and granted a permanent injunction.

It is not deemed necessary or desirable to present a full argument, but important points will be presented and authorities cited in support of them.

POINTS AND AUTHORITIES.

I.

The allegations of the bill show a substantial claim in good faith arising under the federal constitution, and this is sufficient to give federal jurisdiction.

Pac. Elec. Ry. Co. v. *Los Angeles*, 194 U. S., 112.

City Railway Co. v. *Citizens' Street R. R. Co.*, 166 U. S., 557, 562.

II.

The allegations of the bill justify resort to a court of equity, and similar bills have been repeatedly entertained.

Mich. Cen. R. R. Co. v. *Powers*, 201 U. S., 245.

Coulter v. *Louisville & Nashville R. R. Co.*, 196 U. S., 599.

Fargo v. *Hart*, 193 U. S., 490, 503.

Peoples Nat'l Bank v. *Marye*, 191 U. S., 272.

Union Pac. Ry. Co. v. *Cheyenne*, 113 U. S., 516, 525.

Louisville Trust Co. v. *Stone*, 46 C. C. A., 299; 107 Fed., 305.

III.

Resort to the federal court under the equitable circumstances shown was proper, also, because the state was attempting to tax, indirectly, the patents rights and licenses owned by appellee. Such patent rights are federal franchises, and the bill alleged that the state had no power to tax capital stock represented by them.

Bloomer v. *McQuewan,* 14 How., 539, 549.
Bloomer v. *Millinger,* 1 Wall., 340, 351.
Seymour v. *Osborne,* 11 Wall., 516, 533.
Cammeyer v. *Newton,* 94 U. S., 225, 226.
De La Vergne Mach. Co. v. *Featherstone,* 147 U. S., 209, 220.
Southern Pac. R. R. Co. v. *California,* 118 U. S., 109, 112.

The power of the states to tax patent rights has been twice questioned in this court, but under such circumstances that the court was not required to pass specifically upon it and did not do so.

Holt v. *Indiana Mfg. Co.,* 176 U. S., 68, 72.
Indiana Mfg. Co. v. *Koehne,* 188 U. S., 681, 690.

IV.

Federal franchises cannot be taxed by the states in the absence of legislation by Congress permitting such taxation.

California v. *Pac. R. R. Co.,* 127 U. S., 1, 40.
Owensboro Nat. Bank v. *Owensboro,* 173 U. S., 664, 668.

Rights under the patent laws of the United States cannot be taxed or otherwise burdened under state authority.

McCullough v. *Maryland,* 4 Wheat., 316, 431, 436.

Weston v. *Charleston,* 2 Pet., 449, 466-9.

Ex parte Robinson, 2 Biss., 313; Fed. Cas. No. 11932 (Davis, J.).

In re Sheffield, 64 Fed., 833 (Barr, D. J.).

And it does not matter that the burden attempted to be imposed is an indirect one through a tax on corporate capital stock represented in part by an investment in patent rights.

Fargo v. *Hart,* 193 U. S., 490, 500.

Del., Lack. & W. R. R. Co. v. *Penn.,* 198 U. S., 341, 358.

It has been specifically decided in at least two states, that capital stock represented by an investment in patent rights cannot be taxed by the states.

Commonwealth v. *Westinghouse Elec. & Mfg. Co.,* 151 Pa. St., 265; 24 Atl. Rep., 1107.

Commonwealth v. *Edison Elec. Light Co.,* 157 Pa. St., 529; 27 Atl. Rep., 379.

People ex rel. Edison Elec. Ill. Co. v. *Board of Assessors,* 156 N. Y., 417; 51 N. E., 269.

If the assessment of so much of appellee's capital stock as represented its investment in patent rights is not separable from the entire second assessment, then the entire assessment is a nullity.

Santa Clara County v. *So. Pac. R. R. Co.,* 118 U. S., 394, 415.

California v. *Pac. R. R. Co.,* 127 U. S., 1, 29.

V.

The record exhibits in actual operation a process of depriving appellee of property. It shows an absence of due process of law, and shows that appelle has not been afforded the equal protection of the laws.

This court has carefully refrained from enunciating any general definition of "due process of law," and has likewise deliberately avoided unnecessary decisions upon the troublesome subject.

Davidson v. *New Orleans*, 96 U. S., 97, 104.
California v. *Pac. R. R. Co.*, 127 U. S., 1, 28.

It is however well settled that the prohibitions of the 14th Amendment refer to all agencies and instrumentalities of a state, legislative, executive and judicial.

Fayerweather v. *Ritch*, 195 U. S., 276, 297.
C. B. & Q. R. R. Co. v. *Chicago*, 166 U. S., 226, 233.
Scott v. *McNeal*, 154 U. S., 34, 45.
Yick Wo v. *Hopkins, Sheriff*, 118 U. S., 356, 373.
Neal v. *Delaware*, 103 U. S., 370, 397.
Davidson v. *New Orleans*, 96 U. S., 97, 104.
Strauder v. *W. Va.*, 100 U. S., 303.
Virginia v. *Rives, id.*, 313.
Ex parte Va., id., 339.

And "in determining what is due process of law, regard must be had to *substance*, not to form."

C. B. & Q. R. R. Co. v. *Chicago*, 166 U. S., 226, 235.

VI.

In support of the theory that no state action is involved in this case and that a federal court could not take *jurisdiction* of it because, as said, whatever wrongful action has occurred has been the action of subordinate state officials, which is not to be imputed to the state, counsel for appellants have cited a number of cases, including the following, decided in this court:

Virginia v. *Rives,* 100 U. S., 313.
Civil Rights Cases, 109 U. S., 3.
Barney v. *City of New York,* 193 U. S., [illegible].
Coulter v. *Louisville & N. R. R. Co.,* 196 U. S., 599.
Owensboro Water Works Co. v. *Owensboro,* 200 U. S., 38, 45.
Carfer v. *Caldwell,* 200 U. S., 293.
Kentucky v. *Powers,* 201 U. S., 1.

It seems hardly necessary to do more than suggest to this court,—what the quotations made by counsel for appellants themselves show,—that the cases cited have no application to this record. Several of them were removal cases and related to the right of removal under Section 641 of the Revised Statutes, enacted pursuant to Section 5 of the Fourteenth Amendment, and repeatedly held to be narrower than the Amendment. The *Civil Rights Cases* held merely that it was not the intention of Section 5 of the Amendment to invest Congress with the power to enact a general system of municipal laws, but only with the power to pass corrective legislation. If it was held in that case

> "that Congress had no power to legislate in such a way as to confer upon a federal court original jurisdiction in protecting life, liberty and property against the unauthorized acts of individuals, or that of state officials acting contrary to state laws,"

the language to that effect has not been found. The other cases involved only violations of state laws or constitutions under circumstances calling for no federal relief.

VII.

The second capital stock assessment was made under the assumed authority of Section 276 of the General Revenue Law of Illinois, which is as follows:

> "If any real or personal property shall be *omitted* in the assessment of any year or number of years, or the tax thereon, for which such property was liable, from any cause has not been paid, or if any such property, by reason of defective description or assessment thereof, shall fail to pay taxes for any year or years, in either case the same, when discovered, shall be listed and assessed by the assessor and placed on the assessment and tax books. The arrearages of tax which might have been assessed, with ten per cent. interest thereon, from the time the same ought to have been paid, shall be charged against such property by the county clerk. It shall be the duty of county clerks to add uncollected personal property tax to the tax of any subsequent year, whenever they may find the person owing such uncollected tax assessed for any subsequent year."

A *mandamus* suit was brought against the members of the Board of Equalization to compel a reassessment of the capital stock of appellee and cer-

tain other corporations on the ground that their first assessments were so low as to be presumptively fraudulent and to be therefore no assessments at all. The case was practically tried upon demurrer to the petition, for while the members of the board answered it, they relied for their defense solely upon technical grounds, and primarily upon the proposition that they had duly made their assessments and that their judgment and discretion could not be interfered with by the court. Neither appellee nor any other of the corporations affected was a party to the *mandamus* proceeding, in which the writ was ultimately awarded. The decision of the lower court was sustained in the state Supreme Court (*State Board of Equalization* v. *People,* 191 Ill., 528). On the hearing in the Supreme Court, counsel for appellee appeared and asked to be heard *amicus curiae* on behalf of appellee, but the application was denied.

VIII.

The *mandamus* proceeding itself, sustained as it was by the Supreme Court of the state, was an unlawful attempt of the state, through its highest court, to deprive appellee of its property without due process of law, for the proceeding necessarily affected the interests of appellee, and no judgment could lawfully be rendered in the case without the presence of appellee in the proceeding and without its having an opportunity to be heard. The unlawfulness of the proceeding cannot be better set forth than by referring to a subsequent decision of the Supreme Court of Illi-

nois, the nature of which is well shown by the following syllabus:

> "1. MANDAMUS—*one whose rights are shown by petition to be involved should be made a party.* In a proceeding for *mandamus,* when a person is shown to be within the jurisdiction of the court and shown to have a legal interest which will be collaterally determined by the judgment if rendered as prayed in the petition, the court is without jurisdiction to adjudicate the cause until such person has been made a party.
>
> 2. PARTIES—*when want of a necessary party requires reversal without plea or objection.* Omission of a necessary party to a petition for *mandamus,* which appears upon the face of the record, requires the reversal by the Supreme Court, of its own motion, of a judgment awarding the writ, notwithstanding no plea based upon such omission was filed and no objection is made by either party calling attention to the omission.
>
> 3. SAME—*party to be removed from office is a necessary party to mandamus.* In a *mandamus* proceeding against the civil service commissioners to compel them to cancel the certificate of eligibility of an officer appointed by them, remove him from office and certify the name of the petitioner in his stead, the officer to be removed is a necessary party, without whom the court has no jurisdiction to award the writ."
>
> *Powell* v. *The People,* 214 Ill., 475.

Appellee was at all times within the jurisdiction of the court and could have been served with a summons.

IX.

The State Supreme Court held, in the *mandamus* proceeding, that the original capital stock assessments for 1900, made December 3rd of that year, against appellee and the few other corporations named in the proceeding, were to be treated as no assessments, and that the new rules of the board under which these original assessments and all other capital stock assessments against other similar corporations in the state for that year had been made by the state board were improper, primarily because they contemplated that funded corporate indebtedness should not be taken into account in fixing capital stock valuations; and it approved the judgment of the lower court that new assessments should be made in substantial accordance with certain old rules which the board had abrogated at the time of adopting the new ones.

This decision was extraordinary as a judgment, although it may (perhaps) be sound as an exposition of legal principles. It is extraordinary that the court failed to notice its inevitable effect upon interests not before the court and having no opportunity to be heard. The truth probably is that the court possibly resented and distrusted the "what-are-you-going-to-do-about-it" attitude of the state board, and had difficulty in regarding patiently the long-standing custom, testified to in this case, of disregarding corporate indebtedness as a factor in valuing capital stock. Appellee frankly concedes that its original capital stock assessment of 1900 was made in part on a wrong basis, and was legally much too low; but it is not difficult to

understand that the state board had long been accustomed to the general and notorious undervaluation of property, down to 10 per cent., and even lower, of a legally required "fair cash value"—as in the Cook County assessment of 1898, hereinafter mentioned; that a capital stock assessment is not infrequently regarded by laymen as an assessment of shares of stock; and that the members of the state board were, no doubt, very familiar with a practice in their local communities of deducting indebtedness from the value of property to be taxed.

X.

As the *mandamus* proceeding conferred no power upon the Board of Equalization, the second assessment has no better legal standing than it would have if made by the board voluntarily under Section 276 of the Revenue Law. That section is unconstitutional and void as applied to such a situation as this record presents where there has been one assessment and an attempt is made to levy a second one, ignoring the first. The section does not provide for due process of law, and neither in it nor anywhere else in the statute is there any requirement for notice to an interested property holder. While a property owner must take notice of the established time and place of meeting of a board authorized to make a *current* assessment, there can be no occasion for him to take notice that such a board may assume the right to ignore a past assessment against him, and may proceed to make a new assessment on the ground that the property affected was

omitted from the former one. While in this instance appellee did know in advance of the proposed reassessment, it had no opportunity to question the right and power of the board to make it, and, although it was heard by the board as a matter of grace and favor respecting the amount of it, such hearing cannot save the statute from unconstitutionality.

Security Trust and Safety Vault Co. v. *Lexington,* 27 Sup. Ct., 87.

Pittsburg, Cin., Chgo. & St. L. Ry. Co. v. *Backus,* 154 U. S., 421.

Weyerhaueser v. *Minnesota,* 176 U. S., 550, 556.

Winona & St. Peter Land Co. v. *Minnesota,* 159 U. S., 526, 535-8.

Davidson v. *New Orleans,* 96 U. S., 97.

The power of the board to assess the capital stock of appellee had been exercised and exhausted until the original assessment should be set aside in a proper legal proceeding.

Wabash R. R. Co. v. *The People,* 196 Ill., 606, 608.

XI.

It will be noticed that neither by the Illinois courts nor by the state board was anything said or done about giving appellee a credit for the tax already paid under the original assessment. What was done was in fact to burden appellee with *two* assessments. Whatever the *form* in which this was done, the result was

contrary to the fundamental principles of justice which are an element in "due process of law."

C., B. & Q. R. R. Co. v. *Chicago,* 166 U. S., 226, 335.

Of course appellee is equitably entitled to such a credit.

Mix v. *The People,* 116 Ill., 265, 273.

XII.

Under the Constitution of Illinois the legislature *may* provide for some differences in taxation from time to time, "by a general law uniform as to the class upon which it operates," but it has never exercised this power, and under existing laws certainly all capital stock assessment and taxation must be uniform and proportionate.

C. & A. R. R. Co. v. *Livingston County,* 68 Ill., 458.

Law v. *The People,* 87 Ill., 385, 404.

City of Chicago v. *Fishburn,* 189 Ill., 367, 377.

The Supreme Court of Illinois has in late years refused to *declare taxes invalid* in cases where objections have been based solely on violations of the constitutional requirement of uniformity; but it has commonly held, as in the *Law* case, *supra,* that it is the *duty* of assessing officers and bodies to observe the requirement.

Keokuk & Hamilton Bridge Co. v. *The People,* 161 Ill., 132, 138.

Keokuk & Hamilton Bridge Co. v. *The People, id.,* 514, 519-20.

In this case is shown an "unequal and unjust administration" of law, practically under the direction of the state supreme court, not unlike that condemned in respect of the fair-seeming San Francisco laundry ordinance.

Yick Wo v. *Hopkins*, 118 U. S., 356, 373.

Though it is well understood that the 14th Amendment was never intended to compel the states to adopt an "iron rule of uniformity" in their systems of taxation, and that this court interferes reluctantly with state taxation, it is equally true that this court does apply the amendment to state taxation cases upon proper occasion.

It has expressly declared in significant language that rights secured by the supreme law of the land cannot be impaired under the state taxing power.

Connolly v. *Union Sewer Pipe Co.*, 184 U. S., 540, 563.

And it is understood to have interpreted very recently the "equal protection" clause of the 14th Amendment to mean that state taxation must apply uniformly to corporations of the same class.

Mich. Cen. R. R. Co. v. *Powers*, 201 U. S., 245.

In the cases now before the court it is shown that the highest taxing body in the state, and the highest court in the state, have together imposed upon a few corporations taxation upon a radically different basis from that applied for the same period to other corporations of the same class throughout the state generally. If this is not such a denial of the equal protection of the laws as justifies a Federal court in exer-

cising original jurisdiction and granting relief under equitable circumstances it is hard to conceive of any inequality of taxation that could be.

XIII.

The inequality in the second assessment was proved by the testimony of members of the Board of Equalization familiar with the matter, and this was in accordance with a course frequently followed in other cases in this court.

Pelton v. *National Bank,* 101 U. S., 143, 146-7.
Cummings v. *National Bank,* id., 153, 161-3.
Pittsburgh, &c., Ry. Co. v. *Backus,* 154 U. S., 421, 434.
Maish v. *Arizona,* 164 U. S., 599, 611.

The Supreme Court of Illinois criticized the failure of the members of the Board of Equalization to testify in the mandamus suit, saying that they were competent witnesses, and might have been called to explain their methods.

People v. *Board of Equalization,* 191 Ill., 528, 551.

In view particularly of this criticism upon the members of the board for not testifying it is submitted that their testimony ought to be considered proper in the cases before this court. It did not impeach what the members had done, nor set forth "mental operations," but it explained their methods of procedure.

But without the testimony of members of the Board of Equalization the decision of the Supreme Court in

the *mandamus* case sufficiently shows a part of the inequality and injustice involved in the reassessments, for that decision is partially predicated upon the proposition that the board had not taken into account the funded indebtedness of corporations in making its original assessments. The court held that the board should have done this, and the writ of mandamus expressly required such action as to the few corporations whose assessments were under examination. It will be presumed, of course, that the members of the board in making the reassessments obeyed the writ irrespective of any testimony of their own.

The truth is, of course, that the reassessments were altogether court-made assessments, in which the members of the board exercised little or no independent judgment and discretion, but endeavored to follow implicitly the court's writ and command. There was neither due process of law, nor the equal protection of the laws.

XIV.

It remains to consider the relief granted by the decree of the Circuit Court and this calls for some more detailed attention to assessment and taxation figures.

The printed proceedings of the Board of Equalization for 1901 contain some clerical errors in the capital stock valuation and assessment of appellee, made December 23, 1901, for that year (Union Traction Rec., 1120, 1170), in that the figures given as to items were manifestly the items for 1900. (Union Traction Rec., 1124, No. 132.) Only the figures for

the net assessment were at all correct, and even they contained a small error. These errors misled the Circuit Court to some extent. (Union Traction Rec., 1277, 1283.) One of the members of the State Board testified respecting them (Union Traction Rec., 159) and showed that the assessment for 1901 against appellee was in fact made up as follows:

60,000 shares of stock at $125	$7,500,000
Investment in patent rights deducted	725,000
Balance of stock value	$6,775,000
Funded indebtedness at par added	5,508,000
Full capital stock valuation	12,283,000
Equalized or 70% valuation	8,598,100
Full equalized valuation of tangible property deducted	4,909,165
Excess full valuation of capital stock to be taxed	3,688,935
Assessed or 1/5 valuation of capital stock	737,787

The second assessment for 1900 made November 20, 1901 (Union Traction Rec., 1064, 1066), was made up as follows (Rec., 11, 152; Union Traction Rec., 1065):

59,711 shares of stock at $125	$ 7,463,875
Funded indebtedness at par added	4,808,000
Full capital stock valuation	$12,271,875
Equalized value of tangible property deducted	3,268,070
Excess full valuation of capital stock to be taxed	9,003,805
Assessed or 1/5 valuation of capital stock	1,800,761

The deduction of 30 per cent. for equalization on the assessment for 1901 was not given in the second assessment for 1900, made only a few weeks earlier.

This fact was proved by the testimony of members of the board, and, without such testimony, it would be sufficiently obvious from an examination of the figures.

The full information given to the board in 1901 on behalf of appellee is shown in Exhibit A to the bill of complaint. (Rec., 21.) From this will be seen how few were the sales of appellee's shares of stock from which to estimate the market value of all the shares. Full information was also given to the board in 1900 (Union Traction Rec., 179-80, 302), although this latter fact was not made to appear to the courts in the *mandamus* proceeding. One thing should be understood here: the law calls for an impossibility in respect to the statement prescribed by Section 32 of the General Revenue Law. This statement should be filed with the assessors before July 1 in each year, but it calls for information as to facts not known by that date, in Cook County, for the Board of Review, which reviews all local assessments, does not begin its uniformly extended sessions until after July 1, and until the Board of Review has acted the assessments of tangible property cannot be given. This anomaly has caused a long-standing custom to disregard the making of capital stock statements *to the assessors,* and to submit such statements instead directly to the State Board of Equalization seasonably after the board convenes. That custom was followed by appellee and the other corporations now before this court. (Union Traction Rec., 597.)

On pages 33 and 34 of their brief in this case, counsel for appellants have submitted certain computations, one of which requires some notice. It will be

observed that their computation numbered "3," after allowing a deduction of 30 per cent. for equalization from the full capital stock valuation, shows a balance of taxes claimed to be due from appellee of $15,242.74, but it will also be observed that no allowance is made in that computation for the tax upon the capital stock representing the valuation of patent rights. This tax was $10,560. Deducting this amount from the balance as given by counsel for appellants, would leave, according to their statement, only $4,682.74 due. This of course takes no account of the penalty of $7,000 imposed by the County Clerk, which apparently counsel for appellants does not even claim and which is manifestly unjust and unwarranted. In some other respects their figures do not quite agree with the results hereinafter submitted, but the differences are not sufficiently important for discussion.

The equity of a deduction for equalization of at least 30 per cent. from the full capital stock valuation fixed by the State Board against appellee in the second assessment for 1900, is entirely plain quite apart from the testimony of the members of the State Board of Equalization. In truth the deduction for equalization ought to be more than 30 per cent. In this connection certain Cook County assessment figures are instructive.

The assessed values of the tangible property locally assessed in Cook County and returned to the State Board of Equalization for the years 1898, 1899, 1900 and 1901 were as follows:

For 1898 (full and assessed valuation)
(Union Traction Rec., 815).....$180,041,162.00
For 1899, 1/5 valuation (id., 846)..... 378,828,291.00
For 1900, 1/5 valuation (id., 1037)..... 260,564,522.00
For 1901, 1/5 valuation (id., 1253)..... 365,191,329.00

The assessment for 1898 has no particular importance here, but is inserted merely for the better information of the court. It represents the full valuation as well as the assessed valuation made by the local assessors in Cook County for the year 1898, and it was equalized by the State Board by an average addition of 29 per cent. In 1898 a statute was passed providing for the assessment thereafter of property at one-fifth of its full value, and placing a new limit, intended to be applicable to the County of Cook, upon the levying of taxes by tax levying bodies. The taxing machinery was also greatly changed under this statute. It will be seen that the assessed or one-fifth value of 1899 is more than double the supposed fair cash valuation of 1898, which must have been in fact not over 10 per cent. of a true valuation. This is an illustration of the notorious undervaluation hereinbefore referred to, and of which the courts have taken judicial notice. (*City of Chicago* v. *Fishburn*, 189 Ill., 367.)

The Cook County local assessments for 1899, 1900 and 1901 were equalized by the State Board of Equalization as follows: In 1899 the Board deducted 5% from certain classes of property, 2% from some others, and nothing from the balance, making an average deduction of 4%; in 1900 the Board made an average addition of 10%; and in 1901 the Board made no change; so that the local

assessed valuations for the county, as thus equalized, became the following:

1899	$364,147,735.00
1900	286,620,975.00
1901	365,191,329.00

In making their own original assessments for these years it was, of course, incumbent upon the Board of Equalization to conform to the equalized standards of the local assessments for the respective years.

The great reduction in the local assessment of 1900 from that of 1899 received much attention at the hands of the State Board which adopted various resolutions concerning it, finding, among other things, that it was a decrease of 31.2%, and that it involved a substantially new assesment of real estate declared by the Attorney General to be unlawful. (Proceedings of the State Board of Equalization for 1900, Union Traction Rec., 866, 869, 871.) So far as the State Board of Equalization was concerned, however, this assessment had to stand, and the State Board could add only a limited increase under its statutory powers.

The fair equalized taxable valuation of the property of appellee for the year 1900, as reported by Master in Chancery Bishop June 9, 1902, and confirmed by the court, under the method of valuation adopted by Judges Grosscup and Humphrey, was $7,959,738.26. (Rec., 57.) The full equalized valuation of the property of appellee for 1901 as found by the State Board of Equalization was $8,598,100, and no criticism of this valuation has been made.

The total equalized local assessment for Cook County in 1900 was only 78½% of that for 1901, and probably

the actual property was about the same in both years. Appellee reported in 1901 more outstanding stock and bonds than in 1900. (Rec., 21, 22.) Taking the additional stock and bonds at only the par value of $728,900 and deducting 70% of this amount, or $510,230 (being the equalized valuation), from the full equalized valuation of the company's property for the year 1901, leaves $8,087,870 as the full equalized valuation *in 1901* of the same property which the company had in 1900. If the full equalized valuation of the property of appellee for 1900 be taken as 78½% of the full equalized valuation put upon the same property for 1901, the amount would be $6,348,977.95, or $1,610,760.31 less than was found by the master under the method adopted in the federal court. On the basis of an equalized full valuation of $6,348,977.95, and a tax rate of 7.87% on the *assessed*, or one-fifth, valuation, the taxes of the appellee for 1900 would have been $99,932.91. The company actually paid $126,536.28, after complying with the order of the court in this case.

The following figures show the utmost possible difference in results between the valuation method of the federal court and the method of the State Board of Equalization after allowing the specific abatements claimed, including an abatement of only 30% for equalization:

Taxes paid under original assessment (including $27,192.75 of capital stock taxes)		$ 83,949.67
Capital stock taxes extended under second assessment and *mandamus* writ (at rate of 7.87 cents on *assessed* valuation)		141,719.89
Penalty added by County Clerk under supposed authority of Sec. 276 of Gen. Revenue Law of 1872; apparently six months' interest at annual rate of 10 per cent.		7,086.02
TOTAL, as extended		$232,755.58
Equitable deductions:		
For original capital stock tax	$27,192.75	
For above penalty	7,086.02	
For tax on patent investment	10,560.00	
For equalization (taxes on 30 per cent. of full valuation after deducting patent investment)	54,779.55	
Total deductions		99,618.32
Total taxes less above deductions		$133,137.26
Original tax payment		83,949.67
Additional payment required as equitable by Judges Grosscup and Humphrey		42,586.61
Total payment		$126,536.28

Maximum amount of taxes, allowing only 30 per cent. for equalization, according to method of valuation employed by Board of Equalization	$133,137.26
Maximum amount of just taxes according to method of valuation adopted in Federal Court (being amount actually paid)	126,536.28
Difference in amount of taxes according to the two methods.	$ 6,600.98

It is apparent that a much larger allowance than 30 per cent. would be just for equalization purposes in 1900, when compared with the equalization of 1901. Thirty per cent. was the deduction for equalization fixed for 1901 by the state board, which decided that tangible property generally in Illinois had not been given for that year a full valuation of more than 70 per cent. of its true value. As the Cook County assessment for 1900 was less than 4/5 of that for 1901, it is reasonably clear without the testimony of members of the State Board of Equalization that tangible property in Cook County could not have been valued upon as high a basis as 70 per cent. in 1900. As before stated, a full equitable payment from appellee for 1900 would have been $99.932.91, and it actually paid $126,536.28. And it follows from this that the amount of the additional tax payment required by the Circuit Court to be made by appellee as a condition of receiving relief was too large and not too small.

XV.

The record discloses that injustice has not been done to any of the appellants in this case, and the decree should be affirmed.

Respectfully submitted.

WM. G. BEALE,
Of Counsel for Chicago Edison Company, Appellee.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, A. D. 1906.

No. 425/116

SAMUEL B. RAYMOND, COUNTY TREASURER OF COOK COUNTY, ILLINOIS, AND EX OFFICIO COUNTY COLLECTOR OF COOK COUNTY, ILLINOIS; JOHN H. HANBERG, HIS SUCCESSOR AS SUCH COUNTY TREASURER AND COUNTY COLLECTOR, ET AL., APPELLANTS,

vs.

CHICAGO EDISON COMPANY.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS.

APPELLANTS' REPLY BRIEF.

JAMES HAMILTON LEWIS,
Corporation Counsel of the City of Chicago,
DAVID K. TONE,
Special Counsel for said City,
HARRY A. LEWIS,
County Attorney of Cook County,
WILLIAM F. STRUCKMANN AND
FRANK L. SHEPARD,
Assistant County Attorneys of said County,
WILLIAM H. STEAD,
Attorney General of the State of Illinois,
GEORGE B. GILLESPIE,
Special Assistant Attorney General of said State,
Solicitors for Appellants.

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C. 29074

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, A. D. 1906.

No. 425.

SAMUEL B. RAYMOND, COUNTY TREASURER OF COOK COUNTY, ILLINOIS, AND EX OFFICIO COUNTY COLLECTOR OF COOK COUNTY, ILLINOIS; JOHN H. HANBERG, HIS SUCCESSOR AS SUCH COUNTY TREASURER AND COUNTY COLLECTOR, ET AL., APPELLANTS,

vs.

CHICAGO EDISON COMPANY.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS.

APPELLANTS' REPLY BRIEF.

The greater portion of the argument of counsel for appellee deals with matters that have been fully answered by us in our reply brief filed in the case of the Chicago Union Traction Co., No. 424. Counsel have, however, pointed out certain features that are special to this case. To avoid repetition in so far as counsel's arguments have been fully answered by us in the reply brief in the Union Traction Company case, we will refer the court to the appropriate pages of that brief. The special features bearing on this case only will be dealt with separately.

***

I.

The circuit court was without jurisdiction (Reply Brief, Chicago Union Traction Company Brief, pp. 13 to 32).

II.

The acts complained of could not be imputed to the State (Chicago Union Traction Company Brief, pp. 32 to 38).

III.

The appellee was not deprived of its property without due process of law (Chicago Union Traction Company's Brief, pp. 38 to 42).

IV.

Appellee has not been denied the equal protection of the law (Chicago Union Traction Company Brief, p. 42).

V.

The valuation fixed by the State Board of Equalization upon the capital stock and bonded indebtedness of appellee was $1,552,335 less than the undisputed evidence shows that the fair cash market value of said stocks and bonds amounted to on April 1, 1900. George A. Yuille, a Chicago stock broker, testified that the bonds of appellee were on April 1, 1900, worth par, and that its stock was worth $151 per share (C. U. T. Co. Trans., 305).

According to the above evidence, the fair cash market value of the stocks and bonds of appellee on April 1, 1900, would amount to the following sum:

Stock at $151 per share	$9,016,210
Bonds at par	4,808,000
Total	$13,824,210

It thus appears that the State Board of Equalization in the reassessment complained of valued the stocks and bonds of appellee at $1,552,335 less than the undisputed evidence shows was its fair cash market value on April 1, 1900. Our evidence in that regard is undisputed.

VI.

The claim that the members of the State Board of Equalization were coerced into adopting the valuations furnished by the Teachers' Federation and the attorneys for the relators in the mandamus suit is equally untenable. The undisputed evidence shows that the State board fixed the fair cash market value of the stocks and bonded indebtedness of appellee at $1,733,175 less than the valuations furnished to said board by the relators and their attorneys.

The valuation placed upon the capital stock and bonded indebtedness of appellee in the statement furnished to the State Board by the relators was (complainant's Exhibit B, C. U. T. Co. Trans., 112)	$14,005,050
The value fixed upon appellee's capital stock and bonded indebtedness by the State board in the reassessment complained of (C. U. T. Co. Trans., 242)	12,271,875

It is certainly folly to argue that the State board was not in the exercise of its independent judgment, but followed blindly the contention of the relators, when we bear in mind that the valuation fixed by the State board differed from and was a great deal less than the figures furnished by the relators and their counsel. This argument becomes especially pertinent when we examine the figures furnished by the relators with reference to all the other corporations who were defendants to the mandamus suit, and the valuations fixed by the State board upon the capital stock and bonded indebtedness of said corporations, and find that in

every instance the valuations fixed by the State board were far less than the figures furnished to the board by the relators.

VII.

Among the many errors committed by the circuit court to the detriment of appellants was one deducting $10,560 of the tax upon the theory that property of appellee to the amount represented by said tax was invested in patent rights, which were not subject to taxation by the State of Illinois. There are two reasons why the above deductions should not have been made:

First. There is no competent evidence in this record tending to show that any property of appellee invested in patent rights was included in the reassessment complained of. The only proof relied upon in that regard is the testimony of certain members of the State Board of Equalization, which testimony was clearly incompetent (C., B. & Q. Ry. Co. *vs.* Babcock: Lawyers' Co-operative Publishing Company's advance sheets of the Reports of the Supreme Court of the United States, April 1, 1907, page 326).

Second. Where a deduction is demanded for property exempt from taxation, it is the duty of the party claiming such exemption to request the board to act upon such alleged exemption and have the action of the board, or its refusal to act thereon, noted in the record. Where a party has failed to do this, he cannot come into a court of equity for relief. The precise question was before this court in the case of C., B. & Q. Ry. Co. *vs.* Babcock, *supra*. It was there contended, as in the case at bar, that property which was exempt from taxation had been assessed. In that case, as in the case at bar, the record on its face did not disclose any assessment of exempted property. This court there held the record was

not in such a condition that the railway company could raise the point in a bill in equity, and said (page 327):

> "If the roads had wished an express ruling by the board upon the deductions which they demanded, they could have asked for it, and could have asked to have the action of the board, or its refusal to act, noted in the record. It would be time enough to offer other evidence when such a request had been made and refused."

VIII.

Counsel for appellee say that it is apparent without argument that the Civil Rights cases, 109 U. S., 3, and the Removal cases cited by us, arising under section 641, have no application to the questions arising under the 14th amendment. In this contention, so boldly asserted, counsel run counter to the explicit decision of this court; for in Barney *vs.* The City of New York, 193 U. S., 430, this court cited those very cases (Opinion, page 437) in support of the proposition that in that case the deprivation of property was not the action of *the State within the 14th amendment*, but merely the unlawful and unauthorized act of State officers.

IX.

Counsel for appellee seem to assume that we claim that appellee should only be required to pay a balance of $15,242.74. In that contention counsel are in error. Our claim was, and is, that if the circuit court had jurisdiction of this case and the power to make a reassessment, that reassessment should have been made in accordance with the laws of the State of Illinois. Computing the amount of taxes to be paid by appellee in accordance with the laws of the State of Illinois and giving appellee credit for all sums previously paid, and disregarding interest and penalties, appellee is still owing $73,190.53. We made the computation

contained in table 3 (Original Brief, 33) merely for the purpose of showing that, even on the assumption that there was evidence in this record to the effect that the reassessment made upon the capital stock and franchises of appellee was not equalized with the assessments upon other property in the State, still the computation of the circuit court was erroneous.

We respectfully submit that, in any view of this case, the judgment of the circuit court will have to be reversed.

JAMES HAMILTON LEWIS,
Corporation Counsel of the City of Chicago,
DAVID K. TONE,
Special Counsel for said City,
HARRY A. LEWIS,
County Attorney of Cook County,
WILLIAM F. STRUCKMANN AND
FRANK L. SHEPARD,
Assistant County Attorneys of said County,
WILLIAM H. STEAD,
Attorney General of the State of Illinois,
GEORGE B. GILLESPIE,
Special Assistant Attorney General of said State,
Solicitors for Appellants.

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1906.

No. 426.

SAMUEL B. RAYMOND, COUNTY TREASURER OF COOK COUNTY, ILLINOIS, AND *EX OFFICIO* COUNTY COLLECTOR OF COOK COUNTY, ILLINOIS; JOHN J. HANBERG, HIS SUCCESSOR AS SUCH COUNTY TREASURER AND COUNTY COLLECTOR, ET AL., APPELLANTS,

vs.

CHICAGO CITY RAILWAY COMPANY.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS.

FILED OCTOBER 2, 1906.

(20,391.)

(20,391.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1906.

No. 426.

SAMUEL B. RAYMOND, COUNTY TREASURER OF COOK COUNTY, ILLINOIS, AND *EX OFFICIO* COUNTY COLLECTOR OF COOK COUNTY, ILLINOIS; JOHN J. HANBERG, HIS SUCCESSOR AS SUCH COUNTY TREASURER AND COUNTY COLLECTOR, ET AL., APPELLANTS,

vs.

CHICAGO CITY RAILWAY COMPANY.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS.

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1 In the Circuit Court of the United States for the Northern District of Illinois, Eastern Division.

26165.

CHICAGO CITY RAILWAY COMPANY
vs.
SAMUEL B. RAYMOND ET AL.

Mr. John P. Wilson, Mr. E. R. Bliss, solicitors for complainant. Mr. James Hamilton Lewis, corporation counsel, Mr. David K. Tone, special counsel. Mr. Harry A. Lewis, Mr. William F. Struckman, solicitors for defendants.

2 Pleas in the Circuit Court of the United States for the Northern District of Illinois-Eastern Division, in Chancery sitting at the United States Court room, in the City of Chicago in said District and Division before the Honorable Peter S. Grosscup, Circuit Judge of the United States for the Seventh Judicial Circuit, on Wednesday, the twenty-fifth day of July, being one of the days of the regular July Term of said Court, in the year of our Lord one thousand nine hundred and six and of our independence the one hundred and thirty first year.

MARSHALL E. SAMPSELL, *Clerk.*

3 In the Circuit Court of the United States for the Northern District of Illinois.

26165.

CHICAGO CITY RAILWAY COMPANY
vs.
MAURICE FITZGERALD, Town Collector of the Town of South Chicago, and SAMUEL B. RAYMOND, County Treasurer and *ex-officio* County Collector of Cook County.

Be it remembered that on this day to-wit: the thirteenth day of February, 1902, came the complainant in the above entitled cause by its solicitors, Mr. John P. Wilson and Mr. E. R. Bliss and filed in the clerk's office of said Court its certain Bill of Complaint in words and figures following to-wit:

4 In the Circuit Court of the United States, Northern District of Illinois.

Bill. 26165.

CHICAGO CITY RAILWAY COMPANY
vs.
MAURICE FITZGERALD ET AL.

John P. Wilson, E. R. Bliss, Solicitors for Complainant.

4½ UNITED STATES OF AMERICA,
Northern District of Illinois, Northern Division, ss:

In the Circuit Court of the United States in and for the Northern District of Illinois.

To the Judges of the Circuit Court of the United States for the Northern District of Illinois:

The Chicago City Railway Company, a corporation existing under the laws of the State of Illinois, and a citizen of said state, brings this its bill against Maurice Fitzgerald, Town Collector of the Town of South Chicago (commonly and sometimes hereinafter called the "South Town"), in the City of Chicago, County of Cook and State of Illinois, and against Samuel B. Raymond, County Treasurer and *ex-officio* County Collector of said County, both of said defendants being citizens of said state and inhabitants of said district.

And thereupon your orator complains and states as follows:

First. Your orator is a corporation created and existing under the laws of the State of Illinois, and has been for many years the owner of street railways in the City of Chicago, in the said County of Cook, and engaged in the business of operating said street railways within said city and within the Town of South Chicago in the
5 said city.

Second. The defendant, Maurice Fitzgerald, is Town Collector of said Town of South Chicago, duly elected by the voters of said town, and as such Town Collector, is charged by law with the duty of collecting from the several persons named in the Town Collector's books, when delivered to him by the County Clerk of said county, the several sums of personal property taxes therein extended opposite the respective names of such persons. In case any person or corporation named in said books shall neglect or refuse to pay personal property taxes, extended against him in said books, said defendant is authorized and required by law to collect such taxes by distress and sale of goods and chattels of such person or corporation.

The defendant, Samuel B. Raymond, is County Treasurer of said county, duly elected by the voters of said county, and is also *ex-officio* County Collector of said county. At some time between the 10th and 31st days of March, 1902, the defendant,

Maurice Fitzgerald, as such Town Collector, will be required by law to return to the defendant, Samuel B. Raymond, as such County Collector, the tax books for 1901, heretofore received by said Town Collector from said County Clerk, and to make final settlement for the amount of taxes placed in his hands for collection. If it shall then appear from said tax books so returned that any person or corporation mentioned therein shall have failed to pay the personal property taxes extended against such person or corporation, said defendant, Samuel B. Raymond, as such County Collector, is then charged by law with the same duties, and may proceed in the same manner for the collection of such personal property taxes as
6 is provided in the case of town collectors, and is required to collect the same by distress and sale, if necessary.

Third. The Board of Assessors of Cook County was, in the said year 1900, furnished with full information as to all the tangible property, real and personal, in the said County of Cook, owned by your orator on the 1st day of April, 1900, and that said Board of Assessors in said year duly assessed your orator's tangible personal property, for the year 1900 at the sum of five millions of dollars ($5,000,000) that thereafter your orator, in response to notice, appeared, by its counsel, before the Board of Review of Cook County, a body of duly elected officers of said county, authorized by law, among other things, to reduce or increase the real and personal property assessments of persons and corporations owning property in said county, and submitted to said Board of Review such information relative to the property of your orator as was requested and desired; that no change was then made by said Board of Review in the assessment of your orator's property as previously determined by said Board of Assessors, but thereafter a reduction of twenty per cent. was made by said Board of Review in the assessment of all the personal property in said county, including the personal property owned by your orator. The full valuation of all the tangible personal property owned by your orator in the said county on the 1st day of April, 1900, as finally fixed by said Board of Review, for the purposes of taxation was four million dollars ($4,000,000).

That the real estate owned by your orator is situated in the Town of South Chicago, County of Cook and State — Illinois, and was all assessed by the Board of Assessors and Board of Review
7 of Cook County in the year 1900, in like manner and upon the same basis as other real estate situated in the said Town in the said County of Cook.

Fourth. The regular annual meeting for the year 1900 of the State Board of Equalization of the State of Illinois, (said state board being a body of officers duly elected by the voters of the State of Illinois, and charged by law with the duty, among others, of reviewing and equalizing assessments throughout the state, and of determining and fixing the value of the capital stock, including the franchises, of certain specified corporations), was convened at Springfield, in said state, on or about the 11th day of September, 1900.

At said meeting, said State Board of Equalization, ascertained and determined that in order to bring the assessed value of personal prop-

erty and of city lots in Cook County to the state average, as required by law, an addition of 10 per cent. should be made to the assessed value of the personal property, and to the city lots in said county, as fixed by said Board of Review of Cook County, and such addition was accordingly made by said State Board, and was in due course certified to the County Clerk of said county. As a result of such increase by said State Board, the basis and standard of assessment throughout said state was judged and determined by said State Board to be made uniform, and as a further result the total valuation of all property owned by your orator on the first day of April, 1900, in said county, and there locally assessed, as determined by said Board of Review and so equalized by said State Board, was fixed for all purposes of taxation at the sum of $5,612,500; and the assessed value of said property was fixed at one-fifth thereof; being the sum of $1,122,500.

8 At said session of said State Board your orator also appeared by its counsel and gave information as to its property, its shares of capital stock, and evidence and information in respect thereto were also submitted by said Board of Assessors of Cook County, and by others. Upon consideration of the matter, said State Board determined and fixed, at its regular open session, the full value of the capital stock, including the franchise, of your orator, at $9,112,495, and determined and made a new assessment upon the capital stock of your orator of $700,000, being an assessment for that amount in addition to the assessment hereinbefore mentioned, made upon the tangible property of your orator, which assessment fully appears in and by the official records showing the proceedings of said State Board.

Fifth. The aforesaid assessment of $700,000, so made as aforesaid upon your orator's capital stock, was duly certified to the Auditor of Public Accounts of the State of Illinois, and by said last named officer was certified to the County Clerk of Cook County, and said county, city and all other kinds of taxes levied in the year 1900, for and against property situated in the said Town of South Chicago, were duly extended against such assessed value of $700,000; and said taxes were also extended in said warrant against said assessments hereinbefore mentioned, made upon the tangible property of your orator for the said year 1900, and that a warrant was duly issued to the Town Collector of the Town of South Chicago, directing him to collect from your orator the taxes so extended in said tax books upon and against the said assessment so made upon the capital stock and tangible property of your orator for the year 1900 as hereinbefore stated.

Sixth. Thereafter, and on or about the — day of ——, in the year 1901, your orator paid to the then South Town Collector

9 the sum of $58,569, in full satisfaction of the taxes so extended upon and against the said assessment made by the State Board of Equalization upon the capital stock of your orator for the year 1900, as hereinbefore stated, and that no part of the money so paid by your orator on account of said taxes for the year 1900, has ever been returned or tendered back to your orator, but on the con-

trary, said money has been paid over by said former Town Collector, less his commissions for collection, either directly or through said County Treasurer, to the City of Chicago, and other taxing or public bodies entitled to receive the same, and has been used or is still retained by such bodies.

Seventh. While said State Board was in session as aforesaid, and before any final action had been taken by said State Board to determine and fix the proper assessment to be made upon the capital stock, including the franchise of your orator, for the purpose of taxation for the year 1900, a petition of mandamus was filed in the Circuit Court of Sangamon County, Illinois, on or about the 10th day of November, 1900, by the People of the State of Illinois at the relation of one Catherine Goggin, a resident of Cook County, and Robert C. Steele, a resident of Sangamon County, Illinois, against the individual members of the State Board, in which petition it was charged, among other things, that said State Board fraudulently intended to adjourn its session without making any assessment upon the capital stock, including the franchise, of your orator, and of twenty-two other corporations doing business in said City of Chicago, and intended illegally to neglect and refuse to discharge the statutory duty obligatory upon it in that regard; and said petition prayed that a writ of man-
10 damus issue against the members of said State Board, commanding them to make an assessment for the year 1900 on the capital stock, including the franchise, of your orator, and of the other corporations therein mentioned. Neither your orator nor any of the said other corporations were made parties defendant to said petition nor ever became parties thereto. An answer to said petition was filed by the said defendants therein on or about the 24th day of November, 1900, in which said defendants denied that they had refused or intended to refuse to discharge their duty as members of said State Board. Thereafter, as above set forth, said State Board assessed the capital stock, including the franchise of your orator. And afterward, to-wit, on the 3rd day of December, 1900, said board adjourned sine die. On or about the 16th day of December, 1900, said mandamus proceeding was continued at the request of the petitioner therein, and no action whatever appears from the record of said case to have been thereafter taken in said case by either party, until about the 12th day of March, 1901. In the meantime, as aforesaid, your orator had paid the taxes extended upon its assessment upon the capital stock so made by the State Board of Equalization for the year 1900, in the belief that said assessment and the taxes levied thereon, were lawful and final, and in compliance with the requirements of the warrant issued to the Town Collector of the said Town of South Chicago, requiring him to collect said taxes from your orator. After said payment said mandamus case was tried on or about the first day of May, 1901. A final judgment was rendered by the said Circuit Court of Sangamon County in said cause, directing a writ of mandamus to issue against the members of said State Board of Equalization, requiring the said State
11 Board, and the members thereof, to convene forthwith at the capitol building in the County of Sangamon, and that they

forthwith value and assess the capital stock, including the franchises, of each of the corporations mentioned in the petition filed in said cause, including your orator, as of April 1, 1900, "so as to ascertain and determine respectively as to each of said corporations, the fair cash value of its capital stock, including its franchises, over and above the assessed value of the tangible property of such company for the year 1900."

From the judgment so rendered an appeal was prayed by the defendants in said suit to the Supreme Court of Illinois. No evidence was introduced in said cause in said Circuit Court of Sangamon County by the defendants therein, in support of the merits of the assessment theretofore made on the capital stock, including the franchise, of your orator, for the year 1900, and no argument was made, either in said Circuit Court of Sangamon County or in said Supreme Court upon said appeal in support of the merits of the said assessment theretofore made upon the capital stock of your orator for the year 1900, the defense made to said petition for mandamus being rested, by the defendants therein, almost wholly on objections to jurisdiction, and other legal grounds, touching the power of the court to grant the relief prayed for.

On or about the 24th day of October, 1901, the Supreme Court of Illinois affirmed the judgment of said Circuit Court of Sangamon County hereinbefore mentioned, and on or about the 2nd day of November, 1901, a writ of mandamus was issued out of said Circuit Court of Sangamon County in said mandamus proceeding, and said writ was thereafter served upon said members of the State Board of Equalization. Said writ ordered a new capital stock assess-
12 ment against twenty of the corporations mentioned in said writ, including your orator, and the material portion of said writ was in the words and figures following, to-wit:

"Now, therefore that justice may at once be done, you the said State Board of Equalization and the members thereof, and each of you are hereby commanded to convene at the Capitol Building in Sangamon County and State of Illinois, and there forthwith to value and assess the capital stock, including the franchises, of each of said corporations and companies herein named, to wit: Chicago City Railway Company, West Chicago Street Railroad Company, North Chicago Street Railroad Company, Chicago Union Traction Company, People's Gas Light and Coke Company, Chicago Telephone Company, Chicago Edison Company, Chicago Consolidated Traction Company, Chicago Electric Transit Company, Chicago and Jefferson Urban Transit Company, Cicero and Proviso Street Railway Company, Evanston Electric Railway Company, North Chicago Electric Railway Company, North Side Electric Street Railway Company, Ogden Street Railway Company, Chicago North Shore Street Railway Company, South Chicago City Railway Company, Chicago Passenger Railway Company, Chicago West Division Railway Company, North Chicago City Railway Company, as of the first day of April, A. D. 1900, in the manner provided by law, so as to ascertain and determine respectively as to each of said corporations, the fair cash

value of its capital stock, including the franchise, over and above the assessed value of the tangible property of such corporation for the year 1900. And it is further ordered and commanded that in arriving at said valuations and assessments of the capital stock, including the franchises of the corporations herein named, the said State Board of Equalization and the members thereof, and each of them shall from the best information obtainable by it and them, ascertain and take into consideration, among other things, as to each such corporation, as the same was on the 1st
13 day of April, 1900, the market value, or if no market value, then the fair cash value of its shares of stock and the total amount of its indebtedness, except the indebtedness for current expenses, excluding from such expenses the amount paid for the purchase or improvement of property and the assessed or equalized valuation of all tangible property of said corporations, respectively, on said April 1, 1900."

"And you are further commanded to direct the respective assessments so made to be certified by the Auditor of Public Accounts to the County Clerk of Cook County, that the taxes for all purposes thereon, may be extended by said clerk for the year 1900, and you are further commanded to make return to this court on the 22nd day of November, A. D. 1901, in what manner you have complied with this order."

Eighth. Thereafter the regular annual meeting of the State Board of Equalization for the year 1901 was convened at Springfield on the 10th day of December, 1901. By reason of an intervening election, prior to January 1, 1901, the membership of said Board had largely changed. Of the twenty-two members comprising said Board in 1900 only ten remained on said Board in 1901 and the remaining twelve members, constituting a majority of said Board, were new members, who had taken no part in the assessment of the capital stock of corporations for 1900. While said Board was in session in 1901 said writ of mandamus under the said judgment of said Circuit Court of Sangamon County was duly served upon its members.

That on or about the 9th day of November, 1901, said Board of Equalization by its counsel, who had represented it throughout said mandamus suit, appeared in the Circuit Court of Sangamon County, and applied, on behalf of said Board, for an extension of time
14 within which said Board might make its return to said mandamus writ. Said application was denied by said court, and in manner and in terms which were understood by many, if not all, of the members of said Board, and by said Board, as being menacing to the members of said Board, and as laying down specific instructions to them without leaving them any substantial discretion respecting the method and basis of making the new assessment commanded, and requiring them to assess the capital stock and franchise of your orator at its full cash value, and to make its assessment on said basis for the year 1900 without said Board taking into account or consideration the rate of assessment of all taxable property in the State of Illinois as equalized by the State Board of Equalization

for the year 1900, and without attempting to equalize the assessment to be made by said Board in obedience to said writ upon the capital stock and franchise of your orator for the year 1900 with the assessments made upon the other taxable property in the State of Illinois for the year 1900, and without taking into account or making any deduction on account thereof the said assessment of $700,000.00 made in the year 1900 by the State Board of Equalization upon the capital stock and franchise of your orator. Among other things the judge, holding said Circuit Court of Sangamon County, in denying said application, made the following observations:

"The contention is made that the mode of procedure is new to the Board, and that it requires more time. There is no reason the court sees why they should have proceeded otherwise than as commanded in the writ. The law is the same to-night as it was a year ago or two years ago, as far as taxation is concerned in the State of Illinois. There has just simply been a declaration by the highest tribunal of this State that property must be assessed according to the manner prescribed by law and the statute at its fair cash value.

15 "It is said further that the amount of work that they have had to do prevented them from devoting sufficient time to this. As the court views this case, no great amount of time is necessary for that Board to perform their duty. This court decided that what is ordered in the writ be done, and the Supreme Court affirmed that decision. The decision is explicit. There is no reason why any member of that Board should fail to understand exactly what his duty is. All this talk about complications, as to whether they should proceed on that line or this line, or consider this thing or that thing, this amount of per cent. or that amount of per cent. of valuations, is just so much matter to quibble about. This assessment could have been made before the application for the remanding order. It could have been made in a very short time after the writ issued. This is one of the things that they should do. This is one of the orders they should obey, because the time is fixed. They may put off to some other time the assessment of other classes of property, the general assessment for this year, but the assessment of the particular property mentioned in that writ is fixed for a particular date. That is the time they should have addressed themselves to early in the session, if they wanted to comply with the order of the court and obey the law, and that work they must complete at the time fixed."

Thereafter, and on the 20th day of November, 1901, in supposed obedience to said writ of mandamus, said State Board made an assessment against the capital stock and franchise of your orator in the manner and in the figures shown by the following certificates from the Auditor of Public Accounts of the State of Illinois:

STATE OF ILLINOIS, AUDITOR'S OFFICE.

SPRINGFIELD, *January* 24, 1902.

I, James S. McCullough, Auditor of Public Accounts of the State of Illinois, do hereby certify that the State Board of Equalization

of the State of Illinois, at its session in 1901, assessed capital
16 stock against the Chicago City Railway Company for the year 1900, in figures as follows, to-wit:

Amount of capital stock paid up, as reported by the company	$13,000,000.00
Full value of capital stock, including franchise, as fixed by the State Board of Equalization	30,619,000.00
Assessed value of capital stock, including franchises, as fixed by the State Board of Equalization	6,123,800.00
Equalized value of tangible property assessed by local assessors, deducted under requirements of Section 3 of the Revenue Laws	1,122,500.00
Net assessment of capital stock, including the franchise, being excess of equalized value of capital stock and debt over equalized value of tangible property assessed by local assessors	5,001,300.00

In testimony whereof, I hereunto subscribe my name, and affix the seal of my office, the day and year first above written.

J. S. McCULLOUGH,
Auditor of Public Accounts.

[OFFICIAL SEAL.]

Your orator states that its capital stock, on the first day of April, 1900, was $13,000,000.00, represented by 130,000 shares, of the par value of $100 each, and that its bonded indebtedness on April first, 1900, was $4,619,500, which facts had been made known to said State Board by your orator. And your orator is informed and believes, and therefore states the fact to be, that said State Board arrived at its estimate of the full value of your orator's capital
17 stock, including the franchise, by estimating and determining the value of your orator's capital stock at $200 a share, making $26,000,000, and adding thereto the amount of its bonded debt as above stated, and by taking as the assessed value one-fifth of said amount and deducting therefrom the equalized value of the tangible property of your orator assessed by the local assessor.

Your orator further states that said State Board, in making said assessment, wholly failed and refused to take into account its former assessment upon the capital stock and franchise of your orator for the year 1900, on which your orator had paid taxes, as hereinbefore stated, and also refused and neglected to equalize its assessment upon your orator's capital stock and franchise with the assessments made upon all other taxable property in the State of Illinois for the year 1900, although said board and each member thereof well knew that the rate of valuation or assessment of all other property assessed and taxed in the State of Illinois for the year 1900, as equalized by the State Board of Equalization, did not exceed one fifth of seventy per cent. of the cash value thereof, and in making the said last assessment of your orator's capital stock and franchise for the year 1900, said board and its members acted under the belief that said board had no right under the writ issued by said Circuit Court of Sangamon County to take into consideration the rate of assessment in the

State of Illinois on all other taxable property as finally equalized for the year 1900, but that said board was limited in making an assessment, in pursuance of said writ, to the ascertainment of the full cash value of the capital stock and franchise of your orator on the first day of April, in the year 1900, and dividing the same by
18 five and deducting from the result so reached the equalized assessed value of the tangible property of your orator for the year 1900, and taking the sum remaining as the amount which they were required to assess against your orator upon its capital stock and franchise for the year 1900 under the said order of said court.

Your orator further states that the fourth paragraph of section 3 of the Revenue Act of the State of Illinois, under and by virtue of which said State Board of Equalization makes its assessment upon the capital stock of corporations, provides that, "Said board shall adopt such rules and principles for ascertaining the fair cash value of such capital stock as to it may seem equitable and just, and such rules and principles, when so adopted, if not inconsistent with this act, shall be as binding and of the same effect as contained in this act; subject, however, to such change, alteration or amendment as may be found from time to time to be necessary by said board." That on the 22nd day of November, 1900, said State Board of Equalization adopted the following resolution:

"Resolved, That for the purpose of ascertaining the fair cash value of the capital stock, including the franchise, of all companies and associations now or hereafter created under the laws of this State, and for the assessment of the same, or so much thereof, as may be found to be in excess of the assessed or equalized value of the tangible property of such companies and associations respectively, we, the *the* State Board of Equalization, hereby adopt the following rules and principles, viz:

"First. The capital stock of each said company or association shall be valued as an entirety, due consideration being given to the following propositions:

"*a.* To the character and duration of the franchise of said company or association.

"*b.* To the amount of the contribution (if any) demanded of and paid by said company or association under the provisions of
19 any contract or ordinance, to any municipality, as compensation for the use of its franchise privileges in said municipality.

"*c.* The highest and lowest quotations of the shares of stock of said company or association during the twelve months immediately preceding the dates of assessment, and the number of shares of stock sold at such quotations.

"*d.* Any other fact or condition or circumstance that will assist in arriving at a just and equitable fair cash value of said capital stock.

"Second. From the aggregate amount ascertained as aforesaid, there shall be deducted the aggregate amount of the equalized or assessed valuation of all tangible property, respectively, of such companies and associations, wherever the same may be located (such

equalized or assessed valuation of its Illinois property, being taken in each case, as the same may be determined by the equalization or assessment of property by this board), and the amount remaining, in each case, if any, shall be taken and held to be the amount and fair cash value of the capital stock, including the franchise, which this Board is required by law to assess, respectively, against companies and associations now or hereafter created under the laws of this state.

Third. The above and foregoing, are declared to be the only existing rules and principles adopted by this Board for its government in the assessment of the capital stock of companies or associations."

That the Supreme Court of Illinois in the said mandamus case held that the rules adopted by said Board, in the resolution above set forth, were in conflict with the Revenue Statute in force in the State of Illinois, and were illegal and inoperative, and did not from any legal basis upon which the said Board could lawfully ascertain and determine the assessment upon the capital stock of corporations in the State of Illinois. That said Board had not and did not adopt any other rules or principles for assessing the capital stock of corporations under and in pursuance of the provisions of the statute above quoted prior to November 20, 1901, or prior to the making of the said second or new assessment upon the capital stock
20 and franchise of your orator; that said State Board of Equalization, on the 10th day of December, in the year 1901, adopted the following resolutions:

"Resolved, That for the purpose of ascertaining the fair cash value of the capital stock, including the franchise, of all companies or associations now or hereafter created under the laws of this state, and for the assessment of the same or so much thereof as may be found to be in excess of the equalized valuation of the tangible property of such companies and associations, respectively, we, the State Board of Equalization, hereby adopt the following rules and principles, viz:

"First. The fair cash value of the shares of capital stock (consideration being given among other things, to the value of the shares of stock and the quotations of such shares in the market over such a period of time as may be reasonable, also the books of said corporations and the returns made to the Auditor of Public Accounts, or such other information as the board may have or may be able to obtain) and the amount of the indebtedness (except indebtedness for current expenses, excluding from such expenses the amount paid for the purchase or improvement of property) shall be combined or added together.

"Said State Board of Equalization shall then equalize said amount so obtained, so that said companies or associations shall be assessed as near as practicable upon a uniform basis with other property throughout the State.

"Second. From the aggregate amount so determined and equalized as aforesaid, there shall be deducted the aggregate equalized valuation of all tangible property of such corporation or association, respectively, and one-fifth of the remainder, if any, shall be taken and held to be the assessed value of the capital stock of such corporation

or association, including the franchise, over and above the tangible property thereof.

"Third. All heretofore existing rules of this board for the assessment of capital stock, including the franchise of corporations are hereby repealed."

That by section 1 of article 12 of the Constitution of the State of Illinois it is provided:

21 "The General Assembly shall provide such revenue as may be needful by levying a tax by valuation, so that every person and corporation shall pay a tax in proportion to the value of his, her or its property, such value to be ascertained by some person or persons to be elected or appointed in such manner as the General Assembly shall direct, and not otherwise."

That the foregoing constitutional provision requires that all property assessed for taxation in the State of Illinois, in any year, should be assessed upon the same basis or percentage of its actual value, and that said provision is applicable to the assessment of the capital stock and franchises of corporations under the General Revenue Law of the State of Illinois, so that by virtue of said constitutional provision, taken in connection with the Revenue statute of the State of Illinois, it is the duty of the State Board of Equalization to assess all property, including the capital stock of corporations, which it is by law authorized to assess at the same rate or percentage of its actual value as it shall find and determine that all other taxable property in the State of Illinois is assessed and taxed for the same year; that said State Board of Equalization is not given any power by the statute in equalizing the assessments made by the local assessing bodies to raise the aggregate of such assessments in the State of Illinois more than one per cent., its function and duty being practically limited to the equalization of assessments leaving the aggregate of the assessments made by the local assessing bodies at the same amount as originally fixed, so that the basis of the assessment of property in the State of Illinois is fixed in each year by the local assessing authorities, the function and duties of the State Board of Equalization being to equalize the said local assessments, and to make its original assessments of all property assessed by it in each year upon the same basis or

22 percentage of actual value as all other property is assessed for such year in the State of Illinois, after such assessments are equalized by said State Board.

Your orator further states that the assessed value of all the taxable property in the State of Illinois for the year 1899, was $953,099,468.00, and that the aggregate equalized assessed value of all property in Cook County, in the State of Illinois, for the year 1899, was $381,548,581.00; that the aggregate equalized assessed value of all the taxable property in the State of Illinois for the year 1900 was $809,733,405.00; that the aggregate of the equalized assessed value of all property in the County of Cook for the year 1900 was $306,957,900.00, that the aggregate equalized assessed value of all the taxable property in the State of Illinois for the year 1901 was $991,231,829; that the aggregate of the equalized assessed value of all taxable property in the County of Cook for the year 1901 was $408,-

189,960; that the aggregate assessment of all the taxable property in Cook County, as made by the local assessors for the year 1899, was $378,828,291.00; that the aggregate of the assessed value of all the taxable property in Cook County, as assessed by the local assessing bodies for the year 1900 was $260,564,522.00, being a reduction or decrease in the assessment made by the local assessing bodies in Cook County of over $118,000,000.00, or more than thirty-one per cent.; that the total assessed value by the local assessing authorities of all the taxable property assessed by them in Cook County for the year 1901 was $365,191,329.

Your orator further states that the net assessment made by the said State Board of Equalization, under the writ hereinbefore mentioned, upon the capital stock and franchise of the several corpora-
23 tions mentioned in said writ, were as follows:

Chicago City Railway Company	$5,001,300
People's Gas Light and Coke Company	9,217,067
Chicago Telephone Company	775,266
Chicago Edison Company	1,800,761
South Chicago City Railway Company	433,886
Chicago Union Traction Company, Chicago Consolidated Traction Co. (and companies owning the lines leased by them)	15,505,177
Total	$32,733,457

and that the new capital stock assessments made against said corporations by said Board at the same session, after adopting the said rule under which it equalized its original assessments with the equalized assessment of all other taxable property in the State of Illinois, were as follows:

Chicago City Railway Company	$2,541,309
People's Gas Light and Coke Company	5,782,997
Chicago Telephone Company	574,974
Chicago Edison Company	737,789
South Chicago City Railway Company	120,000
Chicago Consolidated Traction Company, Chicago Union Traction Company and companies owning lines leased by them	6,786,091
Total	$16,543,160

Your orator further states that the assessments made by the State Board of Equalization in the year 1899, upon the capital stock and franchises of corporations did not materially differ or vary from the amount of the assessments made by said State Board upon the capital stock and franchises of the corporations in the year 1900, and that the variations above shown in the aggregate of the as-
24 sessed valuations of the property in the State of Illinois, and in the County of Cook for the years 1899 and 1900, did not to any material extent arise or grow out of any differences in the

amounts of the assessments made by the State Board upon the capital stock and franchises of corporations.

Your orator further shows and states that the equalized assessed valuation of all the taxable property in the State of Illinois for the year 1899 did not equal one-fifth of the actual value of the property so assessed; that said assessment for the year 1899 was made by the local assessing bodies in view of the provision then contained in an amendment to the Revenue Act, limiting the aggregate rate of taxation, with certain exceptions, to five per cent. of the equalized assessed value of the taxable property, which provision of the statute so limiting the rate of taxation was adjudged and decided by the Supreme Court of Illinois to be unconstitutional, and void, and that after said decision and in consideration thereof the local assessing bodies, for the purpose of limiting the rate of taxation under the other limitations contained in the statute, reduced the assessed valuation made by them in the year 1900 of the taxable property for the year 1900, and that the Board of Review of the said County of Cook to that end, and for that reason in the year 1900, made the reduction in the assessed value of the taxable property in Cook County hereinbefore mentioned, of the sum of $118,000,000. And your orator avers and charges the fact to be that the average equalized assessed value of taxable property in the State of Illinois for the year 1900 did not exceed one-fifth of seventy per cent. of the cash value thereof, either in fact or in the opinion and judgment of the members of the said State Board of Equalization, and of the said Board, and that if said Board of Equalization had considered itself at liberty under the writ hereinbefore mentioned, to equalize its assessment upon your orator's capital stock with the equalized assessed valuation of all other property assessed for taxation in the State of Illinois for the year 1900, it would have resulted in a reduction of not less than thirty per cent. in the value placed upon said capital stock, of which one-fifth was required to be taken as the basis of taxation, and would have resulted in a reduction of not less than two million ($2,000,000) in the net assessment made by said State Board in the year 1901 upon the capital stock, including the franchise of your orator for the year 1900.

Said assessment for the year 1901 of your orator's capital stock, including the franchise, and said assessments for the year 1901 upon the capital stock of the other corporations named in said writ, show that in no event would the said new assessment against the capital stock and franchise of your orator for the year 1900 have exceeded the sum of $3,000,000 if the said State Board, and the members thereof, had exercised their judgment and discretion in equalizing the valuation of your orator's capital stock and franchise for taxation for the year 1900 with the equalized assessment of all other taxable property assessed in the State of Illinois for the year 1900. But your orator is informed and believes, and so states the fact to be, that said Board, in making said new assessment for the year 1900, and in failing to equalize the same with the assessment made upon all other property in the State of Illinois for the year 1900, considered

itself to be coerced by the writ issued by said Circuit Court of Sangamon County, and to be acting under specific instructions from
26 said court, and to be debarred from all exercise of independent judgment and discretion in regard to the valuation to be placed upon your orator's capital stock and franchise for the year 1900, and for that reason only failed to reduce the amount of its said assessments so as to correspond with the assessments upon other property in the state for said year. Your orator is informed and believes, and therefore states the fact to be that the excess of the capital stock assessments against the corporations named in said writ over and above the net capital stock assessments against the same corporation for the year 1901 arose wholly out of the failure of said Board to equalize the said capital stock assessment for 1900 with the assessments made for the same year of all other taxable property in the State of Illinois.

Ninth. Said second assessment for the year 1900 of your orator's capital stock, including the franchise, was duly certified by said State Board to the Auditor of Public Accounts of Illinois, and by said last named officer was certified to the County Clerk of Cook County. Said County Clerk has, in connection with his extension of taxes generally for the year 1901, made an extension of taxes against said new capital stock assessment, as deemed by him to be required by law, and has recently certified and delivered to said defendant, Maurice Fitzgerald, as town collector of said Town of South Chicago, where any capital stock tax against your orator is properly payable, a tax book or tax books, with a warrant or warrants annexed thereto, as required by law, authorizing and requiring said defendant to enforce the collection according to law of all the taxes so extended against such new and second capital stock assessment. That the aggregate amount of taxes and penalty extended against said new capital stock assessment for the year 1900, and included in the warrant so
27 issued to said defendant, Maurice Fitzgerald, is $413,282.44, made up as follows:

The valuation upon which said taxes are extended is..$5,001,300.00

And the rate of the several taxes extended thereon are as follows:

State	.005
County	.00715
City	.02425
School	.033
Library	.00086
Drainage	.005
Park	.00344

Total rate levied, .0787%, making total tax extended without penalty, $393,602.31, to which has been added an item of $19,680.11, as penalty or interest by reason of delay in the payment of said taxes, said penalty being intended to be imposed upon your orator under the supposed authority of section 276 of the Illinois

General Revenue Law of 1872, for alleged failure on the part of your orator to pay taxes for the year 1900 at some earlier date, as to which last named item your orator says that it paid the taxes levied and extended against its property for the year 1900, as extended upon the warrant issued for the collection of the taxes of 1900, before any penalty or interest accrued thereon, and that your orator has not been delinquent in any respect with reference to the payment of any taxes upon said new capital stock assessment; and your orator charges that there is no authority of law for imposing any penalty or interest upon your orator by reason of the non-payment of the taxes extended upon said new capital stock assessment.

28 *Tenth.* Your orator charges that said new capital stock assessment for 1900 against your orator is illegal, unequal, wrongful and in violation of the Constitution of the United States, as well as in violation of the Constitution of the State of Illinois, for the following reasons, among others:

(1) The first original assessment made in the year 1900 against the capital stock and franchise of your orator for the year 1900, by the State Board of Equalization, as hereinbefore set forth, and upon which taxes have been extended and paid by your orator as aforesaid, has never been vacated or set aside in any judicial or other proceeding to which your orator was a party. In said mandamus proceeding in said Circuit Court of Sangamon County, said court had no power or jurisdiction to set aside, annul or vacate said original capital stock assessment made against your orator during the pendency of said proceeding. Your orator was not a party to said proceeding, and had no opportunity to be heard therein, and your orator charges that said original assessment was legal and valid and that your orator was entitled to rely, and did and does rely upon said original assessment as the final capital stock assessment against your orator for the year 1900, and that such original assessment could only be set aside if at all, in some proceeding to which your orator was a party; that the making of said new assessment by said State Board in November, 1901, and the collection of the taxes extended thereon, now being attempted to be made, as hereinbefore set forth, constitute an attempt to take your orator's property without due process of law, and are in violation of the fourteenth amendment to the Constitution of the United States, and of the Constitution of the State of Illinois.

29 (2) After having made said original capital stock assessment against your orator in December, 1900, and after having adjourned its annual session for that year, said State Board had no power or jurisdiction to make a new capital stock assessment for 1900 against your orator. That said new assessment was made without authority of law and is void, and the collection of said taxes extended upon said new assessment would be a taking of your orator's property without due process of law, and in violation of said fourteenth amendment to the Constitution of the United States, and of the Constitution of the State of Illinois.

(3) Under the coercion of said writ of mandamus, issued by the

said Circuit Court of Sangamon County, said State Board of Equalization selected out of the body of property owners in Illinois your orator and nineteen other corporate taxpayers, and subjected your orator and said nineteen other corporate taxpayers to an additional, oppressive, discriminating and unjust capital stock assessment, whereby it is sought to subject them to more than their proportionate share of taxation, and by such unequal and such unlawfully increased assessment and taxation your orator is denied the equal protection of the laws guaranteed by said fourteenth amendment.

(4) The said State Board of Equalization in the year 1900 made its assessments upon the capital stock of all the corporations in the State of Illinois, which said State Board is authorized to assess, being 334 in number, under the rules adopted by said State Board in November, 1900, and under which rules the original assessment was made against your orator's capital stock. That under said rules said original assessment against your orator was made on the same basis of valuation as the assessments made by said Board in
30 said year against all other corporations subject to capital stock assessment in the State of Illinois; that said writ of mandamus required said Board to make said new assessment against your orator's capital stock for the year 1900 upon an entirely different basis from that prescribed in said rules, and from that upon which all other corporations in the State of Illinois (except those specifically mentioned in said writ of mandamus), had been assessed for the year 1900, and that said new assessment upon the capital stock of your orator for the year 1900 was in fact made by said State Board upon an entirely different basis from that applied by said State Board in assessing the capital stock of all other corporations in the State of Illinois for the year 1900, except those named in said writ of mandamus, and that no new or additional assessment upon the capital stock of any other of the corporations of Illinois, except those specifically named in said writ has been made, nor are any proceedings pending or contemplated for a new or additional assessment on the capital stock of any other of the corporations subject to capital stock assessment in the State of Illinois. That by such action of said Board your orator has been deprived of the equal protection of the laws in violation of said fourteenth amendment to the Constitution of the United States, and your orator is thereby subjected to excessive and disproportionate taxation as compared with all other corporations subject to capital stock assessment in the State of Illinois, with the exception of those specifically mentioned in said writ, contrary to the Constitution of the State of Illinois.

Eleventh. Said new capital stock assessment for 1900, if not absolutely void for the reasons hereinbefore set forth is, nevertheless, excessive, and the taxes extended against it should be reduced to a certain extent, for the following reasons:

31 (*a*) $58,569, paid by your orator as taxes upon its original capital stock assessment for 1900, hereinbefore set forth, should have been deducted by said County Clerk from the amount of the taxes extended upon said new capital stock assessment for the year 1900, and should now be deducted from the amount called for

by the said warrant in the hands of the said defendant, Maurice Fitzgerald, and that the sum of $19,680.11, included in said warrant by way of interest or penalty, should also be deducted from the amount extended against your orator's capital stock assessment for the year 1900 in said warrant. If your orator should be compelled to pay the amount called for by said warrant as taxes upon its capital stock assessment for the year 1900, your orator will be compelled to pay taxes twice on a part of its capital stock, and also to pay a large penalty upon said capital stock taxes without being in default, and your orator would to that extent be deprived of its property without due process of law, and be denied the equal protection of the laws, in violation of the fourteenth amendment to the Constitution of the United States.

(*b*) Said Board of Equalization, under coercion as aforesaid, and only because of such coercion, failed to exercise its independent judgment and discretion as required by law in making said new assessment against your orator's capital stock for the year 1900, and failed to equalize said new capital stock assessment against your orator by making an appropriate reduction in its valuation of your orator's capital stock for the year 1900, in order to make the same uniform with the equalized assessment made against all other taxable property in the State of Illinois for the year 1900, by reason whereof your orator, if compelled to pay the said taxes so ex-
32 tended against said new capital stock assessment for the year 1900, would be subjected to a greater burden of taxation for the year 1900 than its proportionate share as determined by the value fixed by said State Board of Equalization upon its capital stock and franchise as compared with the average rate of assessment of all the taxable property in the State of Illinois for the year 1900, and your orator claims that but for such coercion said State Board of Equalization would have made and in law ought to have made a reduction o at least 30% in its second or new valuation of the capital stock and franchise of your orator for the year 1900, in order to equalize the assessment thereof with the equalized assessment of all other taxable property in the State of Illinois assessed for the year 1900, and would have reduced the net assessment made by the State Board upon your orator's capital stock and franchise from $5,000,000 to a sum not exceeding $3,000,000, and that unless such reduction is now made in said assessment your orator will be deprived of the equal protection of the laws guaranteed to it under said fourteenth amendment, and will be subjected to excessive, unjust and discriminating taxation, contrary to the Constitution of the State of Illinois.

Twelfth. Your orator shows that in case it should fail or refuse to pay said taxes and penalty extended against your orator upon said new capital stock assessment for 1900, said defendant, Maurice Fitzgerald, as Town Collector as aforesaid, and said defendant, Samuel B. Raymond, as such County Collector, after the return of said warrant for the year 1900 to him (if said taxes still remained unpaid), would be required to enforce the collection of said taxes against your orator, and to that end to levy the same by distress and sale of the goods and chattels of your orator, and that such proceeding by dis-

tress and sale, can not be prevented or defended against by
33 your orator otherwise than by a bill in chancery. That *That* your orator's personal property consists chiefly of its cars, and other personal property actually used in its business of transporting passengers upon the streets in the City of Chicago, and that a levy of said tax by distress upon any part of your orator's personal property would interfere and interrupt the operation of your orator's street car system in the City of Chicago, and would greatly embarrass not only your orator in the carrying on of its said business in operating its street cars in the City of Chicago, but would embarrass and injure your orator's patrons, who use your orator's cars, in going to and from their business in the City of Chicago, and that the property so levied upon and sold could not be recovered by your orator in an action of replevin, nor by any other legal proceeding. That after collecting said taxes the defendant is required by law to pay over and distribute such taxes in the proportions designated in its tax book or books to the city treasurer of the City of Chicago, the county treasurer of Cook County, the treasurer of the Sanitary District, and the other officers and authorities entitled to receive the same. That if your orator should pay said taxes to said town collector, your orator to recover back the same would be obliged to bring a separate suit against each one of the several taxing bodies, receiving its proportionate share of said taxes, thereby necessitating a multiplicity of suits, from which this court, as a court of equity, should relieve it; and that the portion of said taxes which would go to the State of Illinois, could not be collected back by your orator by any legal proceeding whatsoever, and that if repayment could be compelled
34 from said City of Chicago and other taxing bodies, such repayment would not cover the costs including commissions deducted for the collection of said taxes. By reason of which matters the collection of the said taxes so extended upon said capital stock assessment would inflict upon your orator great and irreparable injury, for which your orator has not a complete or adequate remedy at law.

Forasmuch, therefore, as your orator is remediless, save in a court of equity, where matters of this sort are properly cognizable and relievable, your orator prays that the defendants, and each of them, may be summoned to appear and answer this bill according to the usual practice in chancery, but not under oath, answers under oath being hereby expressly waived; that the court will declare and decree that said new assessment of $5,001,300 upon the capital stock and franchise of your orator for the year 1900, and the taxes extended and levied thereon are illegal and void, and are in violation of the fourteenth amendment of the Constitution of the United States and of the Constitution of the State of Illinois; that the court perpetually enjoin the defendants, and each of them, from collecting said taxes, or any part thereof; that if a part only of said taxes shall be found by this court to be illegal and void, that the relief prayed for against the whole of said taxes may be granted as to so much thereof as shall be found by this court to be illegal (and in such case your orator is ready and willing and hereby offers to pay so much of said taxes as

shall not be held by this court to be illegal and void); that the defendants be temporarily restrained from attempting in any manner to collect said taxes, and every part thereof until the further order of this court, and that your orator may have such further and other
35 relief as may be equitable, and as may be necessary to fully protect your orator's rights in the premises.

CHICAGO CITY RAILWAY COMPANY,
By DAVID G. HAMILTON,
President.

JOHN P. WILSON &
E. R. BLISS,
Sols. for Compl't.

STATE OF ILLINOIS, *County of Cook, ss:*

David G. Hamilton, being first duly sworn, deposes and says that he is the president of the Chicago City Railway Company, complainant in the above entitled cause; that he has read the foregoing bill of complaint and knows the contents thereof, and that the matters and things therein set forth are true, except as to such matters and things as are therein stated to be made upon information and belief, and as to such matters as are stated to be made upon information and belief, affiant believes the same to be true.

DAVID G. HAMILTON.

Subscribed and sworn — before me *to* this — day of February, A. D. 1902.

[SEAL.]

H. C. ADCOCK,
Notary Public.

(Endorsed:) Filed Feb. 13, 1902 S. W. Burnham, Clerk.

36 And on to-wit: the twenty-eighth day of June, 1902, came Samuel B. Raymond, County Treasurer and *ex-officio* County Collector of Cook County and Maurice Fitzgerald, Collector of the town of South Chicago, by their solicitors and filed in the clerk's office of said Court their certain joint and several answer in the words and figures following to-wit:

37 *Answer.*

In the United States Circuit Court, Northern District of Illinois.

No. —.

CHICAGO CITY RAILWAY COMPANY, Complainant,

vs.

SAMUEL B. RAYMOND, County Treasurer and *ex-Officio* County Collector of Cook County, and MAURICE FITZGERALD, Collector of the Town of South Chicago, Defendants.

The joint and several answer of Samuel B. Raymond, County Treasurer and *ex-officio* County Collector of Cook County, and Maurice Fitzgerald, Collector of the Town of South Chicago, defendants in the above entitled cause, by Edwin W. Sims, County Attorney, Frank L. Shepard, Assistant County Attorney, and William F. Struckmann, Assistant County Attorney, their solicitors, to the bill of complaint of The Chicago City Railway Company, complainant.

These defendants, now and at all times hereafter, saving and reserving unto themselves all benefit and advantage of exception, which can or may be had or taken to the many errors, uncertainties and other imperfections in the said bill contained, for answer thereunto, or to so much and such parts thereof, as these defendants are advised it is or are material or necessary for them to make answer unto, answering say:

1. These defendants admit that the said complainant is a corporation created and existing under the laws of the State of Illinois, and is the owner of street railways in the City of Chicago and engaged in the business of operating said street railways, as alleged in the said bill of complaint.

2. These defendants admit that the defendant Maurice Fitzgerald is the collector of the Town of South Chicago, Cook County, Illinois, and that this defendant Samuel B. Raymond is the County Treasurer and *ex-officio* County Collector of Cook County, Illinois and that by law they are charged with the respective duties, as alleged in paragraph 2nd of complainant's bill of complaint.

38 3. These defendants admit that the real estate owned by said complainant on the 1st day of April 1900, was situated in the Town of South Chicago, Cook County, Illinois, and was assessed for said year by the Board of Assessors and the Board of Review in like manner and upon the same basis as other real estate situated in said town; and admit that the Board of Assessors of Cook County assessed the tangible personal property owned by said complainant on the 1st day of April, 1900, subject to assessment in said County of Cook at the full value of $5,000,000 and the assessed value of $1,000,000, and returned said assessment to the Board of Review of Cook County, as required by law; and that thereafter, in response to a notice complainant appeared before said Board of

Review and was given a hearing in regard to said assessment, and that no change was made therein, except a general reduction of 20 per cent. in the assessment of all personal property in said county including the property of complainant, leaving a total full value of complainant's said tangible personal property of $4,000,000 and an assessed value of $800,000., which assessed value was returned to the proper officers, as required by law.

4. These defendants admit that the State Board of Equalization co-vened at Springfield, Illinois, in 1900, at the time required by law; And these defendants admit that the State Board of Equalization equalized the assessments of personal property and of the city lots between the different counties of the State, and ascertained and determined that there should be added to the assessments on such properties in the County of Cook 10 per cent. of the valuation as returned by the local assessors, and that as a result of such increase the total full cash value of all of complainant's property in the County of Cook assessed by the local tribunals in said county was fixed at the sum of $5,612,500. and the assessed value at the sum of $1,122,500. And these defendants admit that complainant by its officers appeared before the said State Board of Equalization and that the said State Board of Equalization made an alleged finding of the full value of complainant's capital stock and franchise at the sum of $9,112,495. and of an alleged assessed value of $1,822,499., and deducted from said alleged assessed value the assessed
39 value of complainant's tangible property as returned by the local assessors, leaving an alleged net assessment of the capital stock and franchise of complainant, in excess of the said equalized value of tangible property of $700,000.

5. These defendants admit that said net assessment of $700,000. was certified to the County Clerk of Cook County, and that said County Clerk extended against said assessment the different taxes levied in the year 1900 proper to be extended against the assessment of complainant's property for said year, and that the warrants for the collection of said taxes were duly issued to the Town Collector of the Town of South Chicago for execution.

6. These defendants admit that the complainant paid to said collector the sum of $58,569., being the amount of taxes extended against said assessment of $700,000., and admit that no portion of said taxes has been returned or tendered back to the complainant; but these defendants deny that the said payment is in full satisfaction of all taxes against a proper assessment of complainant's capital stock and franchises for the year 1900.

7. These defendants further answering state and allege the fact to be, that the full fair cash value of the complainant's capital stock and franchise on April 1, 1900, was far in excess of the sum of $9,112,495., and that the actual fair cash value thereof on said date was in excess of $50,000,000; that notwithstanding the fair cash value of complainant's capital stock and franchise as aforesaid, the State Board of Equalization, in total disregard of its duty as required by law, wilfully and fraudulently found the full value of complainant's capital stock and franchise as above set forth, and set

down as assessment of the same over and above the assessment of its tangible property by the local assessors as above set forth, which said fraudulent and illegal action on the part of the said State Board of Equalization in relation to valuation and assessment of complainant's property was had by and with the concurrent fraudulent action of complainant itself in its failure to properly
40 list and schedule its property for purposes of taxation and to furnish the statements required by law, and in its fraudulent representations to the said State Board; and these defendants further allege and State the facts to be, that the said alleged assessment was and has been, long prior to the filing of this bill, held and declared by the Circuit Court of Sangamon County, and by the Supreme Court of the State of Illinois to be null and void; and a re-assessment of the capital stock and franchise of the said complainant, over and above the assessed value of its tangible property, was ordered by the Circuit Court of Sangamon County. These defendants admit that while the State Board of Equalization was still in session for the year 1900, a petition for mandamus was filed in the Circuit Court of Sangamon County by the People of the State of Illinois upon the relation of one Catherine Goggin, a resident of said Cook County, and Robert C. Steele, a resident of Sangamon County. These defendants say and allege the fact to be, that the proceedings and judgment heretofore referred to, in and by which a new assessment was ordered, were had in said mandamus proceeding in said Circuit Court of Sangamon County. These defendants further state and allege the fact to be, that it was prayed in said petition for mandamus, that said State Board of Equalization be commanded to make a lawful assessment for the year 1900 upon the capital stock and franchise of the complain-t herein and other corporations named in said petition. These defendants admit that neither the complainant herein, nor any of said other corporations, were made parties defendant to said petition; but these defendants state and allege the fact to be, that this complainant and the other corporations named in said petition were requested and directed by the said State Board to appear in said mandamus proceeding by their own solicitors and to make such defenses as they might deem advisable. That this complainant and said other corporations after a due consideration of the premises, employed attorneys and counsellors, who appeared in said proceedings in the Circuit Court of Sangamon County and in the appeal taken to the Supreme Court of the *the* State of Illinois, and made such defenses as they deemed advisable, which defenses were made for the benefit of the
41 complainant herein and the other said corporations as fully and effectually as if this complainant and said other corporations had been parties defendant the said petition for mandamus by name. These defendants admit that final judgment was rendered by the Circuit Court of Sangamon County and that an appeal was prayed to the Supreme Court of the State of Illinois; but these defendants have no knowledge or information, save as contained in said bill of complaint, as to what defenses were interposed in said Circuit Court or in said Supreme Court, and neither admit nor

deny the allegations in said bill concerning the same, but call for strict proof thereof. These defendants admit that the Supreme Court of Illinois on or about the 24th day of October, 1901, affirmed the said judgment of the said Circuit Court of Sangamon County, and that thereafter a peremptory writ of mandamus was issued by the Circuit Court of Sangamon County commanding substantially as on pages 9 & 10 of complainant's bill of complaint set forth.

8. These defendants admit that in the year 1900 the State Board of Equalization convened at the City of Springfield at the time required by law; but say that the allegation in said bill, that said Board convened on the 10th day of December, 1901 is not true; but state and allege the fact to be, that the said Board convened in regular session long prior to the 10th day of December, 1901. Defendants admit that an election had intervened between the session of the Board in 1900 and the session in 1901, and that the membership of said Board had largely changed. These defendants also admit that the peremptory writ of mandamus under the judgment of said Sangamon County Circuit Court was served upon the members of said Board while they were in regular session for the year 1901. These defendants as to the allegations in said bill of complaint contained that the said State Board by its counsel appeared before the Circuit Court of Sangamon County and applied for an extension of time in which to make its return to the said mandamus writ, say they have no knowledge and are not informed, save as by said bill,
42 and neither admit nor deny the same, but do deny the materiality thereof. And as to the allegations in said bill of complaint contained as to what disposition was made of said alleged application, and as to the language alleged to have been used by the judge of the said Circuit Court, these defendants say that they have no knowledge or information, save as by said bill, and neither admit nor deny the same, but if the same should become material to the issues involved call for strict proof thereof. These defendants further answering admit that thereafter, and on or about the 20th day of November 1901, the said State Board of Equalization made an assessment of the capital stock and franchise of the complainant in the several amounts shown by the certificate from the Auditor of Public Accounts of the State of Illinois, as appears on page 13 of complainant's bill of complaint; but these defendants deny that said State Board, in making said assessment, failed or refused to take into account any former assessment for the year 1900, or refused and neglected to equalize the assessment of complainant's capital stock and franchise with the assessments upon all other taxable property in the State of Illinois for the year 1900; and deny that the assessed valuation for the year 1900 of such other property did not exceed one-fifth of 70 per cent. of the cash value thereof; but these defendants state and allege the fact to be, that the other property of the State was by the different assessing tribunals assessed at what such assessing tribunals considered and ascertained to be one-fifth of the full fair cash value thereof. And these defendants deny that under the said mandate of the said Circuit Court of Sangamon County, the said State Board had no right to take into

consideration the rate of assessment of other taxable property as equalized for the year 1900; and deny that said State Board acted under the belief that they had no such right, but these defendants state and allege the fact to be, that in making said assessment in pursuance to said mandate, the said State Board of Equalization, after taking into consideration the assessments on other properties and the value of complainant's property in pursuance of the rules of said State Board of Equalization which had theretofore been adopted by said State Board and which had received the
43 sanction of the Supreme Court of the State of Illinois, ascertained and fixed for purposes of assessment for taxation for the year 1901 the values of complainant's capital stock and franchise, as in the certificate of the Auditor of Public Accounts on page 13 of complainant's bill of complaint set forth. These defendants admit that on or about the 22nd day of November, 1900, said State Board adopted certain pretended resolutions or rules substantially as on pages 15 & 16 in complainant's bill of complaint set forth; and admit that the Supreme Court of the State of Illinois in said mandamus proceeding adjudged that said rules were in conflict with the revenue laws of the State of Illinois, and were illegal and inoperative. And these defendants state and allege the fact to be, that the rules which were theretofore in force remained in force until on or about the 10th day of December, 1901, when the said State Board adopted certain other rules, which are substantially set forth on page 17 of complainant's bill of complaint.

These defendants further answering as to the allegations in said bill of complaint concerning the assessed valuations of taxable property in the State of Illinois and in the County of Cook for the years 1899, 1900 and 1901, these defendants have no knowledge and are not informed, save as by said bill of complaint, and neither admit nor deny the same, but if such facts or allegations should become material to the issues herein, these defendants call for strict proof thereof. These defendants deny that the equalized assessed valuation of all taxable property for the year 1899 did not equal one-fifth of the actual value of such property; and deny that the local assessing tribunals of the State assessed property within their jurisdiction with any other view or upon any other basis than upon one-fifth of what they considered and determined to be the actual fair cash value. These defendants further answering deny that the equalized assessed valuation of taxable property in the State of Illinois for the year 1900 did not exceed one-fifth of 70 per cent. of the actual fair cash value thereof; but state and allege the fact to be that the different assessing tribunals of the State assessed the property
44 subject to taxation by them at one-fifth of what such tribunals considered and ascertained to be the actual fair cash value thereof. These defendants further answering say that they have no knowledge or information, save as by said bill, as to what the members of the State Board of Equalization believed was the rate upon which the local assessors throughout the State had based their findings of assessed or full valuations for the year 1900, and neither admit nor deny the same. And these defendants deny that in making

said assessment for the year 1900, there ought to have been any reduction from the valuations as ascertained by said State Board; and deny that in no case ought such assessment to have exceeded the sum of $3,000,000; and deny that said State Board did not exercise their own judgment and discretion in equalizing the value of complainant's capital stock and franchise for taxation for the year 1900 with the equalized assessment of other taxable property in the said State of Illinois for said year; and deny that said State Board was coerced, or considered itself to be coerced by the said writ of said Circuit Court of Sangamon County, or that they were acting, or considered themselves to be acting under specific instructions, or that they were debarred from the exercise of their independent judgment and discretion.

9. These defendants admit that the assessments as made by the said State Board were certified to the proper officers as required by law, and that the County Clerk of Cook County has made an extension of taxes against said assessment, and has certified and delivered to the defendant Maurice Fitzgerald warrants for the collection of the same, and has added thereto interest, as required by the laws of the State of Illinois, substantially as in the said bill of complaint on pages 23 & 24 alleged.

10. These defendants deny that said capital stock assessment for the year 1900 is illegal, unequal, wrongful, or in violation of the constitution of the United States or the constitution of the State of Illinois; and deny that the making of said new assessment for the year 1900, and the collection of the taxes extended thereon, constitute an attempt to take complainant's property without due process of
45 law, and are in violation of the provisions of the constitution of the United States or of the State of Illinois; and deny that complainant is thereby denied the equal protection of the laws guaranteed by the constitution of the United States. And these defendants further answering deny that the assessment of complainant's property, as compared with the assessment of the properties of other corporations of the State of Illinois, has deprived complainant of the equal protection of the laws in violation of the constitution of the United States; and deny that complainant is subjected to excessive and disproportionate taxation.

11. These defendants further answering deny that complainant is entitled to any of the relief asked in paragraph 11 of its bill of complaint; and deny that the payment of taxes by the complainant on the alleged first assessment for the year 1900, and the collection of interest, would deprive complainant of its property without due process, and would deny complainant the equal protection of the laws in violation of any of the provisions of the constitution of the United States.

12. These defendants further answering admit that the collector's warrants for the collection of said taxes are now in the hands of the defendant Maurice Fitzgerald for execution, and under the laws of the State of Illinois it is the duty of said collector to enforce collection thereof by levy upon the personal property of the complainant.

And these defendants further answering say as to the allegations

in said bill of complaint contained, not herein specifically answered, admitted or denied, these defendants neither admit nor deny the same, but call for strict proof thereof.

And these defendants further answering deny that the complainant is entitled to the relief or any part thereof in said bill of complaint demanded, and they pray the same advantage of this answer as if they had pleaded or demurred to the same; and they pray to be dismissed with their reasonable costs and charges in this behalf sustained.

46 SAMUEL B. RAYMOND,
County Treasurer and ex-Officio County Collector of Cook County,
MAURICE FITZGERALD,
Collector of the Town of South Chicago,
By EDWIN W. SIMS, *County Attorney.*
FRANK L. SHEPARD,
Ass't Co. Att'y.
WILLIAM F. STRUCKMANN,
Ass't Co. Att'y, Their Solicitors.

EDWIN W. SIMS,
County Attorney.
FRANK L. SHEPARD,
Ass't Co. Att'y.
WILLIAM F. STRUCKMANN,
Ass't Co. Att'y, Solicitors for Said Defendants.

(Endorsed:) Filed June 28, 1902. Marshall E. Sampsell, Clerk.

47 And on to-wit: the ninth day of June, 1902, there was filed in the clerk's office of said Court a certain Report and Testimony in the words and figures following to-wit:

Master's Report and Testimony.

UNITED STATES OF AMERICA,
Northern District of Illinois, Northern Division, ss:

In the Circuit Court of the United States, Northern District of Illinois, Northern Division.

In Chancery. No. 26165.

CHICAGO CITY RAILWAY COMPANY
vs.
MAURICE FITZGERALD ET AL.

Master's Report.

To the Honorable, the Judges of said Court:

In obedience to an order of the Court entered in the above entitled cause on the 25th day of April, A. D. 1902, by which it was referred

to the undersigned to ascertain and report upon the basis prescribed therein the additional amount of taxes for the year 1900 which should be paid by the complainant I have been attended from time to time by the solicitors for the different parties; and there was introduced before me testimony which is herewith returned.

48 Upon an examination of this testimony and the exhibits offered in connection therewith, and after hearing the suggestions of counsel at length, I find and report,

That the amount of additional taxes to be paid by the complainant herein, as aforesaid, is the sum of one hundred and thirty-three thousand, nine hundred and forty-eight dollars and two cents ($133,948.02).

This amount is arrived at by the computation and figures appearing in exhibit B to the testimony herewith returned, and which I find to be supported by said testimony.

Other computations, upon which the contentions of defendants' counsel are based, have been furnished me and I have carefully examined and considered them and heard the suggestions of counsel in support of them, but in arriving at the conclusion heretofore stated, I have not adopted such computations because under said order of reference they are not in my opinion, supported by the testimony.

All of which is respectfully submitted.

HENRY W. BISHOP,
Master in Chancery of the Circuit Court of the United States, Northern District of Illinois.

Dated June 7, A. D. 1902.

I concur in the conclusions reached in the foregoing report.

WALTER McC. ALLEN,
Master in Chancery of the Circuit Court of the United States, Southern District of Illinois.

49 UNITED STATES OF AMERICA,
Northern District of Illinois, Northern Division, ss:

In the Circuit Court of the United States, Northern District of Illinois, Northern Division.

In Chancery. No. 26165.

CHICAGO CITY RAILWAY COMPANY
vs.
SAMUEL B. RAYMOND ET AL.

Testimony taken before Henry W. Bishop, Master in Chancery, on Friday, April 25, A. D. 1902, at 10 o'clock in the forenoon.

Present: John P. Wilson, Esq., on behalf of complainant; Frank L. Shepard, Esq., on behalf of defendants.

Mr. WILSON: Please mark that Exhibit A, and this Exhibit B.

(Said papers marked respectively Exhibit A and Exhibit B, the same being the papers hereinafter introduced in evidence.)

50 C. NESBITT DUFFY called as a witness on behalf of the complainant, being first duly sworn, was examined in chief by Mr. Wilson and testified as follows:

Q. What is your name?

A. C. Nesbitt Duffy.

Q. Mr. Duffy, are you connected in any way with the Chicago City Railway Company?

A. Yes, sir, I am the auditor of that company.

Q. How long have you been the auditor of that company?

A. Since September 1, 1899.

Q. Are you familiar with the books of account of the company?

A. Yes, sir.

Q. I show you statement marked Exhibit A and I will ask you what the figures under the column headed "1900" are taken from?

A. They are taken from the books of the company.

Q. From entries made in the regular and due course of business?

A. Yes, sir.

Q. Are those figures correct, to the best of your knowledge?

A. Yes, sir.

Q. I show you statement marked Exhibit B, and will ask you what the figures 182,651.04 are, they being the second item, what they are taken from?

A. The figures are taken from the books of the company and were charged in the operating expenses for a sum reserved for replacements in the roads.

Q. They are included in Exhibit A under two items of Repairs and Maintenance of track and buildings, and Repairs and Maintenance of tracks and rolling stock, are they?

A. Yes, sir.

51 Q. Is that amount, the entire sum, included in those two items for repairs, for replacements and renewals?

A. Yes, sir.

Q. Can you state the amount of taxes paid by the Chicago City Railway Company for the year 1900?

A. Yes, sir.

Q. What was the aggregate of those taxes?

A. The aggregate was $152,741.84, but of that amount some were assessed in the name of Arthur Wheeler and D. G. Hamilton the amount in the name of Arthur Wheeler being $215.44 and the amount in the name of D. G. Hamilton being $649.49 and the amount in the name of the company $151,876.91.

Q. But the entire amount you have named first was paid by the City Railway Company?

A. Yes, sir.

Q. For the taxes of 1900 and it was all levied and assessed upon the property of the company?

A. Yes, sir.

Q. Can you state the equalized assessed value of the tangible personal property of the company for 1900?

A. The equalized assessed value is $880,000.00.

Q. Which would make the full value, being five times that, $4,400,000.00?

A. Yes, sir.

Q. Did you prepare Exhibit B?

A. Yes, sir.

Q. How did you arrive at this $6,285,714.00 as the value of the tangible personal property of the company for the year 1900?

A. Well, the equalized assessed value is $4,400,000.00 and that sum is arrived at by being reduced 30 per cent. It was figured upon that basis.

Q. $4,400,000.00 was taken as 70 per cent. of the full value?

A. Yes, sir. There was $6,285,714.00 at the full value, before it was reduced by 30 per cent.

52 Q. You have made or revised the computation shown on Exhibit B?

A. Yes, sir.

Q. The computations are made correctly, as you believe?

A. They are verified to the best of my ability.

Mr. WILSON: We offer in evidence Exhibits A and B (said documents are in words and figures as follows to-wit):

EXHIBIT A. 4/25/02. H. W. B.

Chicago City Railway Company.

Condensed Statement of Business for the Years 1899, 1900.

	1899.	1900.
Gross Earnings from passengers...	$5,162,665	$5,506,313.67
Gross Earnings from other sources.	31,774.40	36,866.51
	$5,194,439.40	$5,543,180.18
Operating Expenses	3,325,677.27	3,655,001.64
Net Earnings.....	1,868,762.13	1,888,178.54
Interest	207,877.50	207,877.50
Earnings on stock.....	1,660,884.63	1,680,301.04
Dividends	1,499,997.00	1,575,000.00
Surplus	161,887.63	105,301.04

Details of Operating Expenses.

Wages of train men.....	$1,178,721.19	$1,301,318.21
Transportation expenses	236,244.73	313,855.09
Motive Power.....	375,306.23	387,696.36
Repairs and maintenance of tracks and buildings.....	423,377.43	466,146.64
Repairs & maintenance of rolling stock	485,115.31	495,525.13
General Expenses & taxes, car licenses	626,912.38	690,460.21
Total.....	$3,325,677.27	$3,655,001.64

53 EXHIBIT B. 4/25/02. H. W. B.

Net Earnings	1,888,178.54
Add increase in "Operating Expenses" for charge to "Reserves for Replacement and Renewals".....	182,651.04
	2,070,829.58
Deduct allowance for depreciation on 6,285,714 value of tangible property equalized assessed value being 4,400,000 not deducted in arriving at "net earnings" shown above.....	377,142.84
	1,693,686.74

Less additional taxes as per enforcement of rule....	133,948.02
True net earnings	1,559,738.72
True net earnings capitalized at 6%.....	25,995,645.33
Equalized by reduction of 30%.....	18,196,951.73
Divided by 5 for true re-assessment.....	3,639,390.35
Taxes at 7.87%	286,420.02
Taxes as shown above.....	286,420.02
Taxes as assessed in 1900 1,822,300, rate 8.367%...	152,472.00
Additional taxes as per enforcement of rule.....	133,948.02

54 Cross-examination by Mr. SHEPARD:

Q. Mr. Duffy, was there any other reduction from your computations of the net earnings of the company for depreciation or for replacement or renewals or any other charge of that character than the reduction noted here of $182,651.04 on the books of the company?

A. No, that is the total charge for the replacement and renewals of that year.

Q. That contemplates depreciation as shown by the books of your company and deducted from your net earnings?

A. That is the idea only we do not treat exactly in that way, but we arrive at the same result. Instead of calling it depreciation fund we call it a fund for replacement and repairs or reserve rather, and it is charged into operating expenses as stated.

Q. You add that back to the net earnings before deducting the six per cent. for depreciation, indicated by the Court?

A. Yes, sir, as shown there on Exhibit B.

Q. What period does this statement cover?

A. The year ending December 31, 1900.

Q. Showing net earnings for that year of $1,888,178.54?

A. Yes, sir.

Q. Is that in accordance with your public statements of the earnings of the company?

A. Yes, sir, Exhibit A there, Mr. Shepard, this is a page from the public report of the company, the one published, and that is drawn off from the books and is in conformity with the books.

Q. The several items of property assessed in the name of Mr. Wheeler and Mr. Hamilton to whom did those several items of property belong?

A. The property belongs to the Chicago City Railway Company.

55 Q. And did belong to the company in 1900?

A. Yes, sir, it has always belonged to them.

Q. And carried in their names, carried in the names of those two individuals?

A. It was paid for by the Chicago City Railway Company and is owned by the Chicago City Railway Company and the title of the deeds simply runs in those names.

Q. What was the capital stock of that company, the total issue, in 1900?

A. $13,000,000.00.
Q. And your outstanding bonds?
A. $4,619,500.00.
Q. What dividend was declared to be paid in 1900 on the capital stock?
A. Twelve per cent.
Q. And what aggregate dividend?
A. $1,575,000.00 even.

The WITNESS: In answer to the question what the dividend was, the dividend was twelve per cent. and that was paid on $13,000,000.00 part of the year and part $13,500,000.00.

Q. That is to say, $13,000,000.00 was the capital stock that received the full dividend of twelve per cent. that year and the other $500,000.00 of capital stock, issued some time during the year 1900, received its pro rata share of the twelve per cent?
A. Exactly that.
Q. And the aggregate dividend payment is $1,575,000.00?
A. That is right, sir.
Q. What interest do your bonds draw?
A. They drew at that time four and one half per cent.
Q. How much was paid on the bonded indebtedness for that year?
A. $207,877.50; that is four and one half per cent. of $4,619,500.00.
Q. Did your company carry over any surplus?
A. Yes, sir.
Q. After the payment of all carrying charges and your
56 deductions for reserves, for replacements and maintenance, and after your payment of the dividend of twelve per cent. on the capital stock, and the interest on your bonded debt?
A. There remained $105,302.04 which was passed to the credit of surplus, as shown on that statement.
Q. By your computation, Mr. Duffy, the gross dividend paid by the company for that year and your surplus would indicate the net earnings of the company other than the interest on the bonded debt, would it not?
A. Do I understand you to mean Mr. Shepard, that we made $1,575,000.00 which we distributed in dividends and had $105,301.04 to the credit of surplus after discharging all expenses, and interest on the bonded indebtedness.
Q. Yes, sir.
A. Yes, sir. That is correct, that sum then would be $1,680.301.04 of which $1,575,000.00 was paid in dividends.
Q. This item $182,651.04 which was placed in reserves for replacement and renewals, was it expended during that year or placed in a reserve fund and carried over?
A. At the close of the year it was put into a reserve fund which was to take care of anything that might be up to be taken care of in the way of depreciations.

Q. Was a similar item carried over from the preceding year, 1899?

A. Yes, sir.

Q. To be used during the following current year?

A. Yes, sir.

Q. In keeping up the property?

A. Yes, sir.

Q. Account of the depreciatoin of the property?

A. Yes, sir. And I may say that that fund was exhausted in 1900, was more than exhausted.

The WITNESS: I will get you straight on the dividends, if you would like to have details of it, Mr. Shepard.

Mr. SHEPARD: You can do so if you want to.

57 The WITNESS: I see we paid the twelve per cent. on $13,000,000.00 and the last quarter the stock was thirteen and one half million dollars and twelve per cent. on $13,000,000.00 is $1,560,000.00 and twelve per cent. on $500,000.00 would just make that sum, so that shows the date of the issue of the additional stock was October 1.

Q. Then your dividend payment of $1,575,000.00 your payment of interest on your bonded debt of $207,877.50 and the surplus for that year carried over as such into the succeeding year of $105,301.04 corresponds to your claim of net earnings as shown by your books, does it?

A. Exactly, it balances $1,888,178.54.

Q. To that you have added $182,651.04 which had been previously deducted for replacement and renewals, as an aggregate of the net earnings, without taking into consideration any depreciation, or any charge for replacement and renewals or increased taxes?

A. Well, it is this way, our expenses were a certain sum and were increased $182,651.04 and that sum assessed as reserve.

Q. Which you set aside and carried over to the succeeding year?

A. Yes, sir, as is our custom. If we had not done that, our net earnings would have been the amount indicated there $2,070,829.58.

Q. You have stated that your equalized full value as found by the assessor for purpose of taxation $4,400,000 is 70 per cent. of the full value of that class of property?

A. Yes, sir.

Q. And on that basis the full value of the property by your computation aggregates $6,285,714.00?

A. Yes, sir.

58 Q. And from that you have deducted six per cent. for depreciation?

A. Yes, sir, on that I have deducted from the earnings 6 per cent. as depreciation.

Q. That is to say, you have computed, you ascertained what six per cent. of that would be and deducted that amount from the net earnings of this year?

A. Yes, sir, and having previously added the sum we had previously deducted of $182,651.04 as shown above there.

Signature waived by agreement of counsel.

10:00 a. m., WEDNESDAY, *May* 14, 1902.

Parties met pursuant to notice.
Present: Mr. Wilson, Mr. Shepard.

WILLIAM L. SOUTHWORTH, called as a witness on behalf of the defendant, being first duly sworn, was examined in chief by Mr. Shepard and testified as follows:

Q. What is your name?
A. William L. Southworth.
Q. Where is your residence?
A. 536 Ogden Street, Chicago.
Q. Your occupation?
A. Clerk in the County Clerk's office.
Q. How long have you been a clerk in the County clerk's office?
A. Fifteen years.
Q. The County Clerk of Cook County?
A. Yes, sir.
Q. Mr. Southworth, the principal place of business and office of the Chicago City Railway Company is in the town of South Chicago Cook County, Illinois, is it not?
A. It is assessed in the town of South Chicago and its general office is in the South Town.
59 Q. What was the rate by which taxes were extended for the Town of South Chicago for the year 1900?
A. At 8.36 7/10 in the town of South Chicago.
Q. By what rate were the taxes extended by the County Clerk on the omitted assessment in the town of South Chicago?
A. 7.87.
Q. On the one hundred dollars?
A. Yes.

MR. SHEPARD: That is all.

Signature waived by agreement of counsel.

Which was all the evidence offered or received upon the hearing of the above entitled cause.

(Endorsed:) Filed June 9, 1902, Marshal E. Sampsell, Clerk.

60 And on to-wit: the nineteenth day of May, 1906, came the City of Chicago by its solicitors Mr. James Hamilton Lewis, corporation counsel and Mr. David K. Tone and filed in the clerk's office of said Court in said entitled cause a certain Answer in words and figures following to-wit:

61 *Answer of City of Chicago.*

In the United States Circuit Court, Northern District of Illinois.

No. 26165.

CHICAGO CITY RAILWAY COMPANY, Complainant,
vs.
MAURICE FITZGERALD, Town Collector of the Town of South Chicago, in the City of Chicago, County of Cook, State of Illinois, and SAMUEL B. RAYMOND, County Treasurer and *ex-Officio* Collector of Said County, Defendants.

Answer of the City of Chicago to the Bill of Complaint of the Chicago City Railway Company, Complainant, Filed Herein, After Leave of Court for that Purpose First Had and Obtained.

This defendant, now and at all times hereafter saving and reserving unto itself all benefit and advantage of exception which can or may be taken to the many errors, uncertainties and other imperfections in the said bill contained, for answer thereunto, or to so much and such parts thereof as this defendant is advised is material or necessary for it to make answer unto, answering, says:

1. This defendant admits that the said complainant is a corporation created and existing under the laws of the State of Illi-
62 nois, and is the owner of street railways in the City of Chicago, and engaged in the business of operating said street railways, as alleged in said bill of complaint.

2. This defendant further answering admits that the defendant Maurice Fitzgerald was at the time of filing the bill of complaint a collector of the Town of South Chicago, Cook County, Illinois, and that the defendant Samuel B. Raymond was the County Treasurer and *ex-officio* County Collector of Cook County, Illinois, and that by law said officers are charged with the respective duties substantially as alleged in paragraph 2 of Complainant's bill of complaint.

3. This defendant, further answering, admits that the real estate owned by said complainant on the first day of April, 1900, was situated in Cook County, Illinois, and was assessed for said year by the Board of Assessors and the Board of Review in like manner and upon the same basis as other real estate situated in said County; and further admits that the Board of Assessors of Cook County assessed the tangible personal property owned by said Complainant on the first day of July, 1900, subject to assessment in said County of Cook, at the full value of $5,000,000 and the assessed value of $1,000,000, and returned the said assessment to the Board of Review of Cook County as required by law; and that thereafter, in response to a notice, complainant appeared before said Board of Review
63 and was given a hearing in regard to said assessment, and that no change was made therein, except a general reduction

of 20 per cent. in the assessments of all personal property in said county, including the property of complainant, leaving a total full value of complainant's said tangible personal property of $4,000,000, and an assessed value of $800,000, which assessed value was returned to the proper officer, as required by law. This defendant further answering admits that the State Board of Equalization convened at Springfield, Illinois, in 1900, at the time required by law. And this defendant further admits that the State Board of Equalization equalized the assessment of personal property and of the city lots between the different counties of the State and ascertained and determined that there should be added to the assessments of said properties in the County of Cook ten per cent. of the valuation as returned by the local assessors; and that as a result of such increase the total full cash value of all, the complainant's property in the County of Cook assessed by the local tribunals was fixed at the sum of $5,612,500, and the assessed value at the sum of $1,122,500. And this defendant further admits that the Complainant, by its officers, appeared before the said State Board of Equalization and that the said State Board of Equalization made an alleged finding of the full value of complainant's capital stock and
64 franchise at the sum of $9,112,495.00, and of an alleged assessed value of $1,822,499, and deducted from said alleged value the assessed value of complainant's tangible property as returned by the local assessors, leaving an alleged net assessment of the capital stock and franchise of complainant in excess of the said equalized value of tangible property of $700,000.

5. This defendant, further answering, admits that said net assessment of $700,000 was certified to the County Clerk of Cook County, and that said County Clerk extended against said assessment the different taxes levied in the year 1900, proper to be extended against the assessment of complainant's property for said year, and that the warrants for the collection of said taxes were duly issued to the Town collector of the Town of South Chicago for execution.

6. This defendant further answering admits that the complainant paid to said collector the sum of $58,569, being the amount of taxes extended against said assessment of $700,000, and admits that no portion of said taxes has been returned or tendered back to the complainant; but this defendant denies that the said payment was or is in full satisfaction of all taxes against a proper assessment of complainant's capital stock and franchise for the year 1900.

7. This defendant further answering, states upon information and belief, and from such information and belief charges the
65 fact to be, that the full, fair, cash value of complainant's capital stock and franchises on April 1st, 1900, was far in excess of $9,112,495, and that the actual fair cash value thereof on said date was in excess of $50,000,000, and that notwithstanding the fair cash value of complainant's capital stock and franchises as aforesaid, the said State Board of Equalization, in total disregard of its duty as required by law, wilfully and fraudulently found the full value of the complainant's capital stock and franchises as

heretofore set forth, and set down an assessment of the same over and above the assessment of its tangible property by the local assessors as above set forth, which said fraudulent and illegel action on the part of the said State Board of Equalization in relation to the valuation and assessment of complainant's property was had by and with the concurrent fraudulent action of complainant itself, in its failure to properly list and schedule its property for the purposes of taxation, and to furnish the statements required by law, and in its fraudulent representations to the said State Board of Equalization. And this defendant further states and alleges the fact to be that the said alleged assessment was and has been long prior to the filing of this bill held and declared by the Circuit Court of Sangamon County and by the Supreme Court of the State of Illinois to be null and void, and that a reassessment of the capital stock and franchises of the said complainant over and
66 above the assessed value of its tangible property was ordered by the Circuit Court of Sangamon County. This defendant further answering admits that while the State Board of Equalization was still in session for the year 1900 a petition for mandamus was filed in the Circuit Court of Sangamon County, by the People of the State of Illinois upon the relation of one Catherine Goggin, a resident of Cook *Cook* County, and Robert C. Steele, a resident of said Sangamon County, and that certain proceedings were had in said cause in and by which a new assessment was ordered in said mandamus proceeding by said Circuit Court of Sangamon County. This defendant further states and alleges the fact to be that it was prayed in said petition for mandamus that said State Board of Equalization be commanded to make a lawful assessment for the year 1900, upon the capital stock and franchises of the Complainant herein, and other corporations named in said petition. This defendant further answering admits that neither the complainant herein, nor any of said other corporations were made parties defendant to said petition, but this defendant states upon information and belief, and from such information and belief charges the fact to be, that this complainant and the other said corporations named in said petition were requested and directed by the said State Board to appear in said proceedings by their own solicitors, and to
67 make such defense or defenses as they might deem advisable, and that this complainant, together with said other corporations, did appear in said proceedings in the Circuit Court of Sangamon County, and in the appeal taken therefrom to the Supreme Court of the State of Illinois by their solicitors, and made such defense as they deemed advisable, which defenses were made for the benefit of the complainant herein, and the other said corporations, as fully and effectually as if this defendant and said other corporations had been parties defendant to said petition for mandamus by name. This defendant further answering admits that final judgment was rendered by the Circuit Court of Sangamon County, and that an appeal was prayed to the Supreme Court of the State of Illinois, but as to what defenses were interposed in said Circuit Court or in said Supreme Court this defendant has no knowledge or

information, save that contained in said bill of Complaint, and therefore neither admits nor denies the allegations in said bill concerning the same, but demands strict proof thereof. This defendant further answering admits that on or about the 24th day of October, 1901, the said Judgment of the said Circuit Court of Sangamon County was affirmed by the Supreme Court of Illinois, and that thereafter a peremptory writ of mandamus was issued by the Circuit Court of Sangamon County, commanding the said State Board of Equalization, substantially as on pages 9 and 10 of complainant's bill of complaint set forth.

68 8. This defendant further answering denies that the State Board of Equalization convened in regular session in the City of Springfield, Illinois on the 10th day of December, 1901; but states and alleges the fact to be that the said Board convened in regular session long prior to the 10th day of December, 1901; Defendant further answering admits that prior thereto an election had intervened between the session of the Board in 1900, and the session in 1901; and that the membership of said State Board had largely changed; and further admits that while said State Board was in regular session as aforesaid a peremptory writ of mandamus issued on the said judgment of the said Sangamon County Circuit Court was served upon the members thereof. This defendant further answering says that as to the allegations in paragraph 8 of Complainant's said bill of complaint in regard to the proceedings which were had before said State Board, it is not informed except by complainant's said bill of complaint, and therefore it neither admits nor denies the same, but if the same should become material to the issues herein, demands strict proof thereof. This defendant further answering admits that thereafter, and on or before the 20th day of November, 1901, the said State Board of Equalization made an assessment of the capital stock and franchises of the Complainant in the several amounts as alleged on page 13 of Complainant's bill

69 of complaint. But this defendant further answering denies that said State Board in making said assessment failed or refused to take into account any former assessment for the year 1900, or refused and neglected to equalize the assessment of complainant's capital stock and franchises with the assessment on all other taxable property in the State of Illinois for said year, and denies that the assessed valuation for the year 1900 of such other property did not exceed one fifth of seventy per cent. of the cash value thereof. But this defendant states and alleges the fact to be that the other property in the State of Illinois was assessed by the different assessing tribunals at what said tribunals considered and ascertained to be one fifth of the full fair cash value thereof. This defendant further answering denies that under the said mandate of the said Circuit Court of Sangamon County, the said State Board of Equalization had no right to take into consideration the rate of assessment of other taxable property as equalized for the year 1900, and denies that said State Board acted under the belief that they had no such right. But this defendant states and alleges the fact to be that in making said assessment in pursuance to said mandate the said State Board

of Equalization, after taking into consideration the assessment on other properties, and the value of Complainant's property, in pursuance of the rules of the said State Board which had here-
70 tofore been adopted by said State Board, and which had received the sanction of the Supreme Court, ascertained and fixed for purposes of taxation for the year 1901, the value of complainant's capital stock and franchises, as set forth on page 13 of complainant's bill of complaint. And this defendant further answering states and alleges the fact to be that the complainant herein had due notice, knowledge and information that it was the duty of the said State Board at its said session in 1901, to make an assessment of the capital stock and franchises of the complainant for the year 1901, and that said State Board intended to make such assessment, and that complainant had the right to appear before said Board in regard to the same. This defendant further answering admits that on or about the 22nd day of November, 1900, the State Board of Equalization of the State of Illinois, adopted certain pretended resolutions or rules, substantially as set forth on page 15 of Complainant's bill of complaint; and further admits that the said Supreme Court in said Mandamus proceedings adjudged that the said rules were in conflict with the Revenue laws of the State of Illinois, and were illegal and inoperative. And this defendant states and alleges the fact to be that under the rules which were theretofore in force, remained in force until on or about the 10th day of December, 1901, when the State Board adopted certain other rules substantially as set
71 forth on pages — and — of Complainant's bill of complaint. This defendant further answering says that as to the allegations in said bill of complaint contained, regarding the valuations of taxable property in the State of Illinois and in Cook County for the years 1899, 1900 and 1901, it has no knowledge or information, except that contained in said bill of complaint, and therefore neither admits nor denies the same, but if such fact should become material to the issues herein, demands strict proof thereof. This defendant, further answering, denies that the equalized valuation of all taxable property for the year 1899, did not equal one fifth of the actual value of said property, and denies that the local assessing tribunals of the State assessed property within their jurisdiction with any other view or upon any other basis than upon one fifth of what they considered and determined to be the actual fair cash value. This defendant further answering denies that the equalized assessed valuation of taxable property in the State of Illinois for the year 1900 did not exceed one fifth of seventy per cent of the actual fair cash value thereof, but states and alleges the fact to be that the different assessing tribunals of the State assessed the property subject to taxation by them at an assessed valuation of one fifth of what such tribunals considered and determined to be the actual fair cash value thereof. This defendant further answering says that it has
72 no knowledge or information excepting that contained in said bill of complaint as to what the members of the said State Board of Equalization believed was the rate upon which the local assessors throughout the State had based their findings or assessed the

full valuation for the year 1900, and therefore neither admit nor deny the same. And this defendant further answering denies that in making said assessment for the year 1900, there ought to have been any reduction from the valuation as ascertained by said State Board and denies that in no case ought such assessment to have exceeded the sum of $3,000,000, and denies that the members of said State Board did not exercise their own judgment and discretion in equalizing the valuation of the complainant's capital stock and franchises for the year 1900 with the equalized assessment of other taxable property in the State of Illinois for said year. And denies that the members of said State Board were coerced or*m* threatened or considered themselves to be coerced or threatened by said writ of said Sangamon County Circuit Court or that they were acting or considered themselves to be acting under the specific instructions, or that they were debarred from the exercise of their legal judgment and discretion.

9. This defendant further answering admits that the assessments, as made by the said State Board, were certified and extended,
73 and the warrants delivered, and that interest was added thereto, as required by the law of the State of Illinois, substantially as set forth in paragraph 9, pages 23 and 24, of complainant's said bill of complaint.

10. This defendant further answering denies that the said capital stock assessment for the year 1900 is illegal, unequal, wrongful or in violation of the Constitution of the United States or the Constitution of the State of Illinois; and denies that the making of said new assessment for the year 1900, and the collection of the taxes extended thereon, constitute an attempt to take complainant's property without due process of law, and are in violation of any of the provisions of the constitution of the United States or of the Constitution of the State of Illinois. And denies that Complainant is thereby denied the equal protection of the laws guaranteed by the Constitution of the United States. And this defendant further answering denies that the assessment of complainant's property, as compared with the assessment of the properties of other corporations of the State of Illinois, has deprived the complainant of the equal protection of the laws, in violation of the Constitution of the United States, and denies that the complainant is subjected to excessive and disproportionate taxation.

This defendant further answering states that it is a municipal corporation, duly organized and existing under and by virtue
74 of the laws of the State of Illinois, and that under and by virtue of the laws of the State of Illinois it will be the duty of the County Treasurer and County Collector of Cook County, Illinois, to pay over to this defendant, as its share of the taxes so due and owing from the complainant in this cause, the sum of $213,256.90, and therefore this defendant shows that it is in equity the owner of and entitled to receive the said sum of $213,256.90, out of the taxes now in controversy in this cause.

11. This defendant further answering denies that the complainant is entitled to any of the relief asked for in paragraph 11 of its bill of complaint, and denies that the payment of taxes by the complain-

ant under the alleged first assessment for the year 1900, and the collection of interest thereon, would deprive complainant of its property without due process of law, and would deny complainant the equal protection of the laws, in violation of any of the provisions of the Constitution of the United States.

12. This defendant further answering admits that the collector's warrants for the collection of said taxes were at the time of filing the bill of complaint in this cause in the hands of the defendant Maurice Fitzgerald for collection, and under the laws of the State of Illinois it is the duty of the Town Collector to enforce collection thereof by levy upon the personal property of the complainant.

75 And this defendant further answering says that as to the allegations in said bill of complaint contained not herein specifically answered, admitted or denied, is that this defendant neither admits nor denies the same, but demands strict proof thereof. And this defendant further answering does — that the complainant is entitled to the relief or any part thereof in said bill of complaint demanded, and prays the same advantage of this answer as if it had pleaded or demurred to the same, and prays to be henceforth dismissed with its reasonable costs and charges in this behalf most wrongfully sustained.

CITY OF CHICAGO,
By DAVID K. TONE,
Special Counsel.
JAMES HAMILTON LEWIS,
Corporation Counsel.

(Endorsed:) Filed May 19, 1906 Marshall E. Sampsell, Clerk.

76 And on to-wit: the twenty-fifth day of July, being one of the days of the regular July term of said Court, 1906, in the record proceedings thereof in said entitled cause before the Hon. Peter S. Grosscup, Circuit Judge, appears the following entry to-wit:

76½ In the Circuit Court of the United States, for the Northern District of Illinois, Eastern Division.

26165.

CHICAGO CITY RAILWAY COMPANY
vs.
MAURICE FITZGERALD, Town Collector of the Town of South Chicago, SAMUEL B. RAYMOND, County Treasurer, and CITY OF CHICAGO.

This cause came on to be further heard at this term, and was argued by counsel; and thereupon, upon consideration thereof, it is ordered that all objections and exceptions to the Master's reports be, and the same are hereby overruled, and that the Master's reports and each of them be, and they are hereby approved and confirmed; and the court finds that all the material allegations of the bill of com-

plaint are sustained by the evidence, and that the equities of the case are with the complainant; and thereupon the court doth order, adjudge and decree as follows:

That the assessment made by the State Board of Equalization of the State of Illinois, at its session in 1901, against the com-
77 plainant, the Chicago City Railway Company, upon its capital stock for the year 1900 (the net amount of said assessment being $5,001,300), was made under the coercive influence of a writ of mandamus issued by the Circuit Court of Sangamon County, in the State of Illinois, and did not represent the real or independent judgment of the said State Board of Equalization, and that the assessments made by said State Board of Equalization, at its meeting held in 1901, upon the capital stock of the said complainant, and upon the capital stock of the other corporations named in the writ of mandamus above mentioned, for the year 1900, was in fact made upon a materially different basis from that upon which the capital stock of all other corporations of the same class was assessed by the said State Board of Equalization for the year 1900, and also upon a basis materially different from that upon which all other taxable property in the State of Illinois was assessed for the year 1900: that said assessment made in 1901 on the capital stock of the complainant for the year 1900, was made under the coercive influence of said mandamus without the exercise or application of the judgment of the State Board of Equalization, or the members thereof, to the ascertainment of the value of said capital stock, and without the State Board of Equalization, either in fact or in form, taking into consideration the basis upon which all other taxable property in the State of Illinois was assessed and taxed for the year 1900, and
78 without in fact or in form equalizing the valuation or assessment of the capital stock of said complainant for the year 1900 with all or any of the assessments made upon the other taxable property in the State of Illinois for the year 1900, with the result that the said assessment on the capital stock of complainant, made in the year 1901 for the year 1900, was made on a much higher basis than that upon which the other taxable property of the State of Illinois was assessed and taxed for the year 1900; and that said assessment upon said capital stock for the year 1900 was and is unjust and inequitable: that the making of said assessment as aforesaid in 1901, upon the capital stock of the said complainant, and the extension of taxes thereon, and the attempt to enforce the payment of such taxes so extended, from complainant, was and is a violation of the Fourteenth Amendment to the Constitution of the United States, and that the attempt to enforce the collection from complainant of the taxes extended on said reassessment will, unless restrained, result in a multiplicity of suits, and in irreparable injury to complainant.

An order was entered herein on the 28th day of June, 1902, as a condition precedent to the granting of the temporary relief prayed for in the bill of complaint herein, that complainant should pay, in addition to the tax already paid upon the first or original capital stock assessment for the year 1900, the further sum of $133,948.02,

making a total capital stock tax to be paid by complainant
79 for the year 1900 of $192,517.02, which is found and decreed by the court to be all that complainant should equitably be required to pay as a capital stock tax for the year 1900. Said additional sum of $133,948.02 has been paid by complainant to the county treasurer of Cook County, in compliance with said order, making the total amount paid by complainant, as taxes upon its capital stock for the year 1900, the said sum of $192,517.02.

It is therefore further ordered, adjudged and decreed that the said assessment of $5,001,300 on the capital stock of complainant, made by the State Board of Equalization in the year 1901 for the year 1900, and all taxes levied and extended thereon, and now spread upon the books of the tax collection agencies in the City of Chicago, County of Cook and State of Illinois, for collection, be and they are, and each of them is, illegal, null and void, and that the defendants, Maurice Fitzgerald, Town Collector of the Town of South Chicago, and his successor and successors in office, as such Town Collector, and the defendant, Samuel B. Raymond, County Treasurer of Cook County, Illinois, and *ex-officio* County Collector of said county, and his successor and successors in office, as such County Treasurer and *ex-officio* County Collector, and the defendant, the City of Chicago, and each of them, and each and every of their respective agents, deputies, servants, attorneys and representatives be, and they are,
80 and each of them is, hereby perpetually enjoined and restrained from in anywise levying or collecting, or in any manner attempting, directly or indirectly, to levy or collect, or to enforce against the complainant, or against any of its property, said tax or taxes, or any or either of them, or any part thereof.

It is further ordered, adjudged and decreed that the costs of this cause be taxed against complainant.

81 And on to-wit: the tenth day of August, being one of the days of the regular July term of said Court, 1906, in the record of proceedings thereof before the Hon. Peter S. Grosscup, Circuit Judge appears as of July twenty-fifth 1906, the following entry to-wit:

82 In the Circuit Court of the United States, Northern District of Illinois, Eastern Division.

No. 26165.

CHICAGO CITY RAILWAY COMPANY
vs.
SAMUEL B. RAYMOND ET AL.

This cause this day coming on to be heard, after due notice to all the parties to this cause: and it appearing to the court that prior to the entry of the final decree in this cause on July 25th 1906, the term of office of Samuel B. Raymond, as County Collector, had ex-

pired, and that John J. Hanberg had been duly elected and qualified as his successor in office; and it appearing that prior to the entry of the final decree herein, said John J. Hanberg, as the successor in office of said Samuel B. Raymond, had entered his appearance in this cause and was made a party defendant and had adopted all the pleadings and proceedings of the other defendants in this cause and had agreed not to introduce any new evidence.

Now it is hereby ordered that the final decree entered herein on the 25th day of July 1906, be so amended as to insert after the words "City of Chicago" on Page 4, being in the third line from the bottom, the following words:—"And John J. Hanberg, successor in office of said Samuel B. Raymond, as County Treasurer of Cook county, Illinois, and *ex-officio* County Collector of Cook County, Illinois, and *ex-officio* Town Collector of the various Towns within the City of Chicago, and his successor and successors in office," this order entered *nunc pro tunc* as of July 25th 1906.

83 And on to-wit: the tenth day of August, 1906, there was filed in the clerk's office of said Court a certain Certificate in words and figures following to-wit:

In the Circuit Court of the United States, Northern District of Illinois.

No. 26165.

CHICAGO CITY RAILWAY COMPANY, Complainant, *Complainant,*
vs.
SAMUEL B. RAYMOND, County Collector ET AL., Defendants.

Be it remembered that on the final hearing of the above entitled cause, before his Honor Judge Grosscup, on the 5th day of June, 1906, counsel for the City of Chicago made and insisted upon before the Court each and every objection in reference to the admission and exclusion of evidence made by the defendants or any of them before the Master, as shown in the various Masters reports now on file in this cause, and said objections and each of them were overruled by the Court, to which rulings and to each of them counsel for the City of Chicago excepted; and counsel for the City of Chicago also objected to the Court hearing or considering any oral evidence for the purpose of explaining, varying or contradicting the official acts, records and proceedings of the said Board of Equalization of the State of Illinois for the years 1900 and 1901 in reference to the capital stock assessment levied by the State Board of Equalization of the State of Illinois against the complainant in the year 1901 as and for the year 1900.

Said objection was overruled by the Court, to which ruling
83½ counsel for the City of Chicago excepted.

The court basing its decree not upon the findings of fact

by the Master but upon the evidence contained in the Master's report.

P. S. GROSSCUP.

(Endorsed:) Filed Aug. 10, 1906. Marshall E. Sampsell, Clerk.

83¾ And on to-wit: the tenth day of August, 1906, came the defendants in said entitled cause by their solicitors and filed in the clerk's office of said Court their certain Petition for Appeal in words and figures following to-wit:

84 Petition for Appeal.

In the Circuit Court of the United States, Northern District of Illinois, Eastern Division.

No. 26165.

CHICAGO CITY RAILWAY COMPANY, Complainant,
vs.
SAMUEL B. RAYMOND, County Treasurer, Cook County, Illinois, and *ex-officio* County Collector of Cook County, Illinois, and JOHN J. HANBERG, His Successor in Office as County Treasurer of Cook County, Illinois, and *ex-officio* County Collector of Cook County, Illinois, and *ex-officio* Town Collector of the Town of South Chicago, and MORRIS FITZGERALD, Town Collector of the Town of South Chicago, and THE CITY OF CHICAGO, Defendants.

Petition for Appeal.

The above named defendants, Samuel B. Raymond, County Treasurer Cook County, Illinois, and *ex-officio* County Collector of Cook County, Illinois, and John J. Hanberg, his successor in office as County Treasurer of Cook County, Illinois, and *ex-officio* County Collector of Cook County, Illinois, and *ex-officio* Town Collector of the Town of South Chicago, and Morris Fitzgerald, Town Collector of the Town of South Chicago, and The City of Chicago, and each of them, believing themselves to be aggrieved by the order
85 and decree of this Court, made and entered on the 25th day of July, A. D. 1906, whereby the said defendants and each of them, and each and every of the officers, agents and employés of the said defendants are perpetually enjoined and restrained from in any wise levying or collecting or in any manner attempting to levy or collect or to enforce against the complainant the taxes or any or either of them made and levied by the State Board of Equalization in the year 1901 for the year 1900, said taxes amounting to the sum of $5,001,300—all of which appears of record in said Court and which decree is more fully set forth in the record in this cause, and the said above named defendants hereby jointly and severally pray

an appeal from said order and decree to the Supreme Court of the United States.

HARRY A. LEWIS,
WILLIAM F. STRUCKMANN,
JAMES HAMILTON LEWIS, AND
DAVID K. TONE,
Solicitors for the Above Named Defendants.

The above appeal is allowed, and the appeal bond is fixed at $200, said bond to be approved by the Clerk of this Court.

P. S. GROSSCUP.

(Endorsed:) Filed Aug. 10, 1906. Marshall E. Sampsell, Clerk.

86–88 And on to-wit: the tenth day of August, 1906, come the defendants in said entitled cause by their solicitors and filed in the clerk's office of said Court their certain assignment of errors in words and figures following to-wit:

89 In the Circuit Court of the United States, Northern District of Illinois, Eastern Division.

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vs.
SAMUEL B. RAYMOND, County Treasurer, Cook County, Illinois, and *ex-officio* County Collector of Cook County, Illinois, and JOHN J HANBERG, His Successor in Office as County Treasurer of Cook County, Illinois, and *ex-officio* County Collector of Cook County, Illinois, and *ex-officio* Town Collector of the Town of South Chicago, and MORRIS FITZGERALD, Town Collector of the Town of South Chicago, and THE CITY OF CHICAGO, Defendants.

Assignment of Errors.

The above named defendants, Samuel B. Raymond, County Treasurer, Cook County, Illinois, and *ex-officio* County Collector of Cook County, Illinois, and John J. Hanberg, his successor in office as County Treasurer of Cook County, Illinois, and *ex-officio* County Collector of Cook County, Illinois, and *ex-officio* Town Collector of the Town of South Chicago, and Morris Fitzgerald, Town Collector of the Town of South Chicago, and The City of Chicago, jointly and each of them separately and severally show that in the record and proceedings in the above entitled cause and in the decree made herein July 25th, 1906, manifest error has occurred, to the prejudice of these defendants and each of them, especially in the following particulars:

First: The said Circuit Court erred in failing and refusing to dismiss this cause for want of jurisdiction in a Federal Court, appearing upon the face of complainant's bill of complaint.

Second: The said Circuit Court erred in failing to dismiss complainant's bill of complaint for want of jurisdiction because the undisputed evidence in this record shows that a Circuit Court of the United States is without jurisdiction to hear and determine the matters and things charged in complainant's bill.

Third: The said Circuit Court erred in refusing to hold that the allegations of the complainant's bill of complaint show that the complainant has not been denied by the State of Illinois or its officers, any right, privilege or immunity guaranteed to the complainant by the Fourteenth Amendment to the Constitution
90 of the United States.

Fourth: The said Circuit Court erred in refusing to hold that the allegations of complainant's bill of complaint show that the complainant has not been deprived of its property without due process of law, in violation of the Constitution of the United States.

Fifth: The said Circuit Court erred in refusing to hold that the State of Illinois had not denied to the complainant the equal protection of its laws within its jurisdiction.

Sixth: The said Circuit Court erred in refusing to find that the sole grievance complained of in complainant's bill of complaint is that the officers of the State of Illinois charged with the duty of making a fair and equal assessment of the complainant's capital stock, have made an assessment that is unfair and unequal, contrary to and in violation of the Constitution and the Laws of the State of Illinois; and said Circuit Court likewise erred in assuming and retaining jurisdiction of this cause, when, upon the face of complainant's bill of complaint, it appears that the said Circuit Court was without jurisdiction.

Seventh: The said Circuit Court erred in refusing to hold that inasmuch as the complainant and defendants were all citizens of and residents of the State of Illinois, a Federal Court had no jurisdiction in this cause to hear and determine the fairness, equality or regularity of the assessment made against the complainant, and the said Circuit Court erred in refusing to dismiss this cause for want of jurisdiction.

91 Eighth: The said Circuit Court erred in entering upon a calculation as to the amount of taxes to be paid by the complainant upon its capital stock for the year 1900 and in finding and determining the amount of said taxes, for said Circuit Court should have held that the determination as to the amount of taxes to be paid by all persons within the State of Illinois was a matter exclusively committed by the laws of Illinois to the assessing officers of the State of Illinois.

Ninth: The said Circuit Court erred in overruling the objections and exceptions and each and every of said objections and each and every of said exceptions to the said Master's reports and to each of them.

Tenth: The said Circuit Court erred in approving and confirming the Master's reports and each of them, filed in this cause.

Eleventh: The said Circuit Court erred in failing and refusing to

sustain the objections and each and every of the same filed by the defendants to said Master's reports and to each of said reports.

Twelfth: The said Circuit Court erred in finding that all of the material allegations of the bill of complaint are sustained by the evidence and likewise in finding that the equities of the case are with the complainant.

Thirteenth: The said Circuit Court erred in failing to find that the material allegations of the bill of complaint in this cause have not been proved by any competent evidence.

92 Fourteenth: The said Circuit Court erred in finding that the assessment made by the State Board of Equalization of the State of Illinois, at its session in 1901 against the complainant, upon its capital stock for the year 1900, amounting to $5,001,300, was made under the coercive influence of a writ of mandamus issued by the Circuit Court of Sangamon County, in the State of Illinois, and did not represent the real or independent judgment of the said State Board of Equalization.

Fifteenth: The said Circuit Court erred in failing and refusing to find that the assessment, amounting to $5,001,300 made by the State Board of Equalization of the State of Illinois at its session in 1901 against the complainant, upon its capital stock for the year 1900, was made by the said State Board of Equalization in the exercise of its own judgment and upon its official responsibility.

Sixteenth: The said Circuit Court erred in finding that the assessments made by the State Board of Equalization at its meeting, held in 1901, upon the capital stock of said complainant and upon the capital stock of the other corporations for the year 1900, named in the writ of mandamus, issuing from the Circuit Court of Sangamon County, Illinois, were in fact made upon a materially different basis from that upon which the capital stock of all other corporations of the same class were assessed by the State Board of Equalization for the year 1900, and also upon a basis materially different from that upon which all other taxable property in the State of Illinois was assessed for the year 1900.

93 Seventeenth: The said Circuit Court erred in refusing and failing to find that the only competent evidence contained in the record in this cause showed that the assessments made by the State Board of Equalization at its meeting held in 1901 upon the capital stock of said complainant, and upon the capital stock of the other corporations for the year 1900, named in the writ of mandamus issuing from the Circuit Court of Sangamon County, Illinois, were in fact made upon the same or a similar basis as that upon which the capital stock of all other corporations of the same class were assessed by the State Board of Equalization for the year 1900, and also that said assessments as to each of said corporations were made upon the same or a similar basis upon which all other taxable property in the State of Illinois was assessed for the year 1900.

Eighteenth: The said Circuit Court erred in finding that said assessment made in 1901 on the capital stock of complainant, was made under the coercive influence of a writ of mandamus, issuing from the Circuit Court of Sangamon County, Illinois, without the

exercise or application of the judgment of the State Board of Equalization or the members thereof, to the ascertainment of the value of said capital stock and without the State Board of Equalization, either in fact or in form, taking into consideration, the basis upon which all other taxable property in the State of Illinois was assessed and taxed for the year 1900 and without in fact or in form equalizing the valuation or assessment of the capital stock of said complainant for the year 1900 with all or any of the assessments made upon the other taxable property in the State of Illinois for the year 1900, with the result that said assessment made on the capital stock of the complainant, in the year 1901 for the year 1900, was made on a much higher basis than that upon which the other taxable prop-
94 erty of the State of Illinois was assessed and taxed for the year 1900.

Nineteenth: The said Circuit Court erred in refusing and failing to find that the assessment made in the year 1901 on the capital stock of the complainant, was made without any coercion and in the exercise of the independent judgment of the State Board of Equalization and the members thereof, for the purpose of ascertaining the fair value of the capital stock of said complainant, and that said assessment was obtained and resulted from the said State Board of Equalization equalizing the valuation or assessment of the capital stock of said complainant for the year 1900 with all of the assessments made upon other taxable property in the State of Illinois, and that the assessment so arrived at was just and fair to the said complainant.

Twentieth: The said Circuit Court erred in finding that the making of the assessment for the year 1900 upon the capital stock of said complainant, and the extension of the taxes thereon, and the attempt to enforce the payment of the taxes so extended, from complainant, was and is a violation of the Fourteenth Amendment to the Constitution of the United States.

Twenty-first: The said Circuit Court erred in entering the order on the 28th day of June, 1902, to the effect that the complainant should pay, in addition to the tax already paid, upon the first or original capital stock assessment for the year 1900, the further sum of $133,948.02, making a total capital stock tax to be paid by complainant for the year 1900 of $192,517.02, which was found and decreed by the court to be all that complainant should equitably
95 be required to pay as a capital *d*tock tax for the year 1900, for said Circuit Court should have found, if it had jurisdiction of this cause and of the parties hereto, that the complainant should be required to pay the aggregate amount of all taxes assessed against it in the year 1901 as and for the year 1900 upon its capital stock, aggregating $5,001,300.

Twenty-second: The said Circuit Court erred in ordering, adjudging and decreeing that the assessment of $5,001,300 on the capital stock of complainant, made by the State Board of Equalization in the year 1901 for the year 1900, and all taxes levied and extended thereon, and now spread upon the books of the tax collecting agencies in the City of Chicago, County of Cook and State of Illinois, for collection, are and each of them is illegal, null and void, and that the

defendants Samuel B. Raymond County Treasurer of Cook County Illinois, and *ex-officio* County Collector of Cook County Illinois, and *ex-officio* Town Collector of the Town of South Chicago, and John J. Hanberg, his successor as County Treasurer of Cook County, Illinois, and *ex-officio* County Collector of said County and *ex-officio* Town Collector of the Town of South Chicago in said County and his successor and successors in office as such County Treasurer and *ex-officio* County Collector and *ex-officio* Town Collector of said Town of South Chicago, and the defendant Maurice Fitzgerald Town Collector of the Town of South Chicago and the defendant, the City of Chicago, and each of them, and each and every of their respective agents, deputies, servants, attorneys and representatives, be and are perpetually enjoined and restrained from in anywise levying or collecting, or in any manner attempting, directly or indirectly, to levy or collect, or to enforce against the complainant, or against any of its property, said tax or taxes, or any or either of them, or any part thereof.

96 Twenty-third: The said Circuit Court erred in admitting and receiving in evidence over the objection and exception of defendants' counsel, the following testimony of Samuel M. Barnes, a member of the State Board of Equalization, of the State of Illinois for the years 1900 and 1901:—

I heard the members of the State Board of Equalization discuss the remarks of the court on the application for an extension of time to make return to the writ of mandamus. My recollection of one remark that I heard was that it was a mere question of the Board's getting their pencils and getting to work and they ought to do it. I heard one of the Board say that the court was very vituperative in this matter. I think it was either Mr. Schaefer or Mr. Hopkins of the Committee on the Board who was over there listening to the court. The impression I got was very strongly fixed in my mind and it was that his attitude was intensely hostile to the Board and I was told by those who heard him that it was in the shape of a roast from start to finish as far as his manner was concerned. Of course, I cannot just quote the language he used, but rather his manner I was told was vituperative, absolutely so. I was told this by members of the State Board of Equalization who were present and heard the remarks of the Judge. The reassessment as we determined it, was made with a view to satisfying the court, the order of the court. We made no deduction, if I remember rightly, on account of that all of these Companies but two had in 1900 been assessed upon their capital stock. We did not take into consideration the fact, if it was a fact that other property in the State had not been assessed at the maximum more than 70 per cent. of its value. The court, in his discussion, gave an illustration of the manner in which the assessment should be made and I think he made an example of the Gas Company here; in any event one of the companies he made an example of that and in that example he said just how the

97 assessment should be made and as this was an order of the court, we followed that example that he gave in a general way, for all these assessments. Mr. Smith and Mr. Greenacre furnished these tables (referring to complainant's Exhibit A, 10/23/03) said

document being a compilation of the value of the capital stock of said Companies, prepared by Miss Goggin and Miss Haley, as members of the Teachers Federation. Our desire in making this reassessment was in order to satisfy the Circuit Court of Sangamon County, because it was not my judgment that it was a proper assessment. The general idea seemed to be with the committee on capital stock that the action of the committee was dictated by the court. It was discussed between the committee on capital stock at about the time the reassessment was reported to the Board and the first object to be attained was to satisfy the court. The assessments that were made subsequent to this assessment of 1900 were based on what we belivered to be the law and in a general way on the judgment of the members, that is on the real value. The assessment for 1901 we regarded as representing our real judgment and the other we did to satisfy the court. The restraining order issued by the court was dissolved on the 22nd of November and I think it was a very short time after that on that day that we made our return to the writ.

Twenty-fourth: The said Circuit Court erred in admitting and receiving in evidence, over the objection and exception of defendants' counsel, the following testimony of Frank P. Martin, a member of the State Board of Equalization of the State of Illinois for the years 1900 and 1901:—

I remember making the reassessment on or about the 22nd day of November, when a writ of mandamus issued from the Circuit Court of Sangamon County, early in November, and that an application was made to the Circuit Court of Sangamon County for an extension of time within which to make the reassessment, and it was denied. I have read in the examination of Dr. Barnes what
98 purport to be the remarks of Judge Thompson on that occasion. Shortly after those remarks were made by the Judge, they were repeated to me and I was familiar with them. A statement was also made, purporting to have come from Judge Thompson that we had better get our candles and lamps and begin to get busy. We felt, when we made the assessment, that we were bound absolutely by the mandate of the court and the deliberations of the court. I felt at the time that the values ought to be made on the information furnished by Mr. Greenacre from the School Teachers. The capital stock committee, of which I was a member, relied for information in fixing the values in the reassessment in relation to the complainant companies, upon the information furnished by the teachers, being complainant's Exhibit A. We made this assessment because I thought I wanted to satisfy the court and what the court wanted was to satisfy Mr. Greenacre and the teachers. I was not taking my own judgment in the matter at all. I did not take into consideration what other property throughout the State was valued at. I did not take into consideration what the capital stocks of these companies had been assessed at for the year 1900. As far as I remember no deduction was made in fixing the assessed value of the capital stock of these companies on the reassessment on account of property throughout the State on the average, personal and real, not

having been returned at full value for assessment at its full value. In the year 1900 and other previous years the State Board of Equalization did not, I think, treat the bonded indebtedness of corporations as assets, and that was so in respect to all corporations throughout the State.

Twenty-fifth: The said Circuit Court erred in admitting and receiving in evidence, over the objection and exception of defendants' counsel the following testimony of John S. Cruttenden, a member of the Board of Equalization of the State of Illinois for the years 1900 and 1901:

99 "I remember the mandamus suit brought on the relation of Catherine Goggin and R. S. Steele against the State Board of Equalization. The writ of Mandamus was issued from the Circuit Court in Sangamon County, on or about the second of November, 1901, and I remember that an application was made on or about the 9th or 10th of November, to the Circuit Court of said County, for an extension of time within which to comply with the order as expressed in the writ, and I heard read what purported to be the remarks of Judge Thompson made on that application. The information upon which we based the figures that we made for the re-assessment of 1900, was practically based upon the documents laid before us by the Teachers, known as Exhibit B. Our idea in making this assessment, was to comply with the request of the court. The assessment, as finally reached by us, upon these companies named as complainants in these cases, did not represent what we considered to be the value of their capital stock for the purposes of assessment; not according to the information that we gained afterwards. We supposed from this document, that these teachers had pretty reliable information on the values, and we took those figures almost all the way through. We concluded to take the example of the Peoples Gas Light and Coke Company cited by the court for all the cases, thinking that we would satisfy the court. It was the feeling of the Board that if we did not comply with the idea of the court; whether right or wrong, we would all go to jail. I know I had people calling at my office- at Springfield and Chicago, at my offices, and informing me that it would be an unpleasant thing to go to jail about this matter. In making this report which was adopted by the Board, we did not make any deduction on account of the assessment against the capital stock that had been made against these companies. We did not make any deduction, because of the

100 fact that other property in the State had not been assessed, to its full value. We proceeded upon the theory that it was absolutely void; that they were not entitled to any credit, and we would not take any chances of punishment for contempt by giving them credit. You told us (Referring to counsel for Union Traction Company) that the Union Traction Company controlled the stock of the Underlying Companies; but we did not give any credit in the re-assessment. We assessed the whole stock of the other Company, too, upon the advice of Mr. Greenacre. In the case of the re-assessment of the Chicago Edison Company for 1900, we made no reduction on account of the Capital stock invested in patent rights.

Prior to the year 1900, they equalized and endeavored to make the assessment upon the same basis as to values as property throughout the state was assessed.

Twenty-sixth: The said Circuit Court erred in admitting and receiving in evidence over the objection and exception of defendants' counsel the testimony of Louis D. Hirsheimer, a member of the State Board of Equalization of the State of Illinois, for the year 1901;

"I remember that about the 2nd of November, 1901, a writ of mandamus issued against the members of the State Board of Equalization, returnable November 22nd, I believe, and that an application was made by the members of the State Board for an extension of time, within which to comply with the order of the court as expressed in its writ. The next morning I heard what purported to be extracts from the remarks of Judge Thompson, in rendering his decision on the application for an extension. The remarks were freely discussed at the hotel by members of the Board, and I was informed that he was very much displeased by the application for an extension even being asked; and finally gave them the ultimatum of making an assessment, or of being punished for contempt of
101 court. I heard him say that all that was necessary was a lead pencil and a little time, that all it required was the sharpening of a lead pencil and getting to work. The printed form furnished by Miss Haley and Miss Goggin were principally relied upon in making up the figures. Before our report was made I talked with Mr. Smith. Mr. Greenacre stated that the report was all right. I felt that anything Mr. Greenacre would recommend the court would perhaps consider to some extent as right. I heard him say that whatever the views of any member of the Committee as to values to be taken the opinion laid down there was what it would be, or something to that effect. In making up the report, I did not take into consideration the fact that there had been assessments made on all of the complainant companies, except two. In making up the report as to the values of these properties, I did not make any deduction whatever, in order to equalize the values of these properties with the values of other property in the State. We made an application for an extension of time to make these returns, in order to have more time to consider it, in arriving at our conclusion; but when that was denied, we had to make our report on such information as we had. In making these figures, to a very large extent, we acted upon the wishes of the Teachers' attorney and the Court's instructions.

In the matter of the Chicago Edison Company's assessment for the year 1900, the capital stock was $6,000,000. That was assessed at 125, and a credit of $725,000 given for United States Patents, leaving $6,775,000. Taking the debt at par, $5,508,000, making a total value of $12,283,000 on a basis of 70 per cent.; making $8,598,100; tangible property, $4,909,165, leaving -3,688,935, full value of the capital stock; one fifth value $737,787.

102 Twenty-seventh: The said Circuit Court erred in admitting and receiving in evidence over the objection and exception of defendants' counsel, the testimony of William M. Flook, as follows:

I made certain mathematical calculations and deductions, which are set forth in "Flook Exhibit A 11/25/03, H.W.B." That Exhibit was compiled, in a general way, from the collection and compilation of statistics and figures from the records of the State Board of Equalization, from the time it first commenced to make reports, in 1873, down to 1900, and from the report of the Railroad and Warehouse Commission of the State of Illinois, for 1900, and from the report of the Railroad and Warehouse Commission of the State of Illinois, for 1900, and from Brown's Directory of Gas Companies for the year 1900. I have reduced the result of that work to the form of a report or statement. This statement has been made from the source I have now described (referring to said Flook Exhibit A.)

Twenty-eighth: The said Circuit Court erred in admitting and receiving in evidence, over the objection and exception of defendants' counsel, the document shown as "Flook Exhibit A, 11/25/03 H.W.B." as follows:

"From the report of the Railroad and Warehouse Commission for the year 1900 (pp. lxxx*ll*–lxxxv*ll*) it appears that there were in that year 116 railroad companies operating within the state of Illinois that the total mileage of main line and branches owned by said railroad companies was 47,685.37; miles; that of such total mileage so owned by said railroad companies, 10,817.10 miles of main line and branches were located in Illinois; that 1,548.71 miles of second, third and fourth additional main tracks were so owned and located in Illinois; that 4,248.86 miles of yards, sidings and spurs were so owned and located in Illinois; that 164.61 miles of industrial tracks were so owned and located in Illinois, and that 103.52 miles
103 of new line building during the year 1900, exclusive of side tracks, were so owned and located in Illinois.

From said report it further appears (pp. lxxx*Vll Xclll*) that the total amount *of* outstanding of capital stock of said railroad companies was $1,401,508,589.; that the amount of capital stock per mile of line was $28,867; that the total amount outstanding of bonded debt of said railroad companies was $1,667,190,160.; and that the amount of funded debt per mile of line was $34,305.

Assuming that the value of the railroad property in this state was as great per mile of road as that out side of the state, and multiplying the mileage of the main lines and branches in Illinois (10,817*)* miles) by the amount of capital stock per mile of line ($28,867.), it appears that the capital stock of said 116 railroad companies represented by the mileage of main lines and branches owned by said railroad companies in this state was $312,254,339.

Upon the same basis, multiplying the mileage of the main lines and branches in Illinois (10,817*)* miles) by the amount of funded debt per mile of line ($34,306.), it appears that the funded debt of said 116 railroad companies represented by the mileage of main lines and branches owned by said railroad companies in this state was $37,077,185.

Upon the same basis the total amount of capital stock and funded debt represented by the mileage of main lines and branches owned by said railroad companies within this state was $683,331,524.

From the published report of the State Board of Equalization for the year 1900 it appears that the full value of all the railroad property in the State of Illinois, as found*ed* by said Board, included main tracks, second main tracks, side or turnout tracks, buildings on right of way and rolling stock, was $389,393,360.

104 From the published report of the State Board of Equalization for the year 1873 (p. 35) it appears that the following resolution was referred to the Committee on Assessment of Capital Stock of Corporations:

"Resolved, that for the purpose of equalizing between land, town and city lots, personal property, railroads and corporations, sixty per cent. be the rate of general average in the State."

From the published report of said Board for the year 1874 (p. 79) it appears that the Committee on Capital Stock of Corporations made a report to the Board, accompanying which was a table (pp. 86, *et seq.*) showing "The assessment of capital stock of companies and associations incorporated under the laws of this State, other than railroad companies." Such companies and associations are listed in said table under the following headings: "Name of company; Location; Capital stock paid up; Total indebtedness, except for current expenses; Market or actual value of paid capital stock and debt; as determined by the state board; Capital stock and debt, as equalized with the aggregate assessment of the state, by deducting forty per cent. of market or actual value; Total equalized value of tangible property assessed where located; Assessed and equalized value of capital stock, being excess of equalized value of capital stock and debt over equalized value of tangible property." The report of said Committee was adopted by the Board. (p. 96).

105 From the published report of said Board for the year 1875 (pp. 8, 9) it appears that the following resolution was adopted:

"Resolved that in the opinion of this Board, the real and personal property of the state is assessed for the year 1875 at fifty per cent. of its cash value."

From the published report of said Board for the year 1876 (pp. 7, 9) it appears that the following resolution was adopted:

"Resolved that it is the opinion of this Board that the real and personal property of the State has been assessed at fifty per cent. of its cash value, for the year 1876."

From the published report of said Board for the year 1877 (pp. 17, 18) it appears that the following resolution was offered:

"Resolved that it is the opinion of this Board that the real and personal property of the State is assessed for the year 1877 at sixty per cent. of its cash value."

That an amendment changing the percentage from sixty per cent. to fifty per cent. was accepted by the mover of such resolution, and that the same was then adopted.

From the published report of said Board for the year 1878 (p. 10) it appears that the following resolution was offered:

"Resolved that it is the opinion of this Board that the real and per-

sonal property of the State is assessed at sixty per cent. of its cash value for the year 1878."

That said resolution was amended by changing the per-
106 centage from sixty per cent. to fifty per cent., and as amended adopted.

From the published report of said Board for the year 1879 (pp. 10, 11) it appears that the following resolution was offered:

"Resolved that it is the opinion of this Board that the real and personal property of the State, is assessed at sixty-five per cent. of its cash value for the year 1879."

That said resolution was amended by changing the percentage from sixty-five per cent. to fifty per cent., and as amended adopted.

From the published report of said Board for the year 1880 (p. 6) it appears that the following resolution was adopted:

"Resolved that in the opinion of this Board the real and personal property of the state is assessed at fifty per cent. of its cash value, for the year 1880."

From the published report of said Board for the year 1881 (p. 9) it appears that the following resolution was adopted:

"Resolved that in the opinion of this Board the real and personal property of the State is assessed at fifty per cent. of its cash value, for the year 1881."

From the published report of said board for the year 1882 (p. 6) it appears that the following resolution was adopted:

"Resolved that in the opinion of this Board the real and personal property of the State is assessed at fifty per cent. of its cash value, for the year 1882."

107 From the published report of said Board for the year 1883 (p. 5) it appears that the following resolution was adopted:

"Resolved that in the opinion of this Board the real and personal property of the State is assessed at fifty per cent. of its cash value for the year 1883."

From the published report of said Board for the year 1890 (p. 5) it appears that the following resolution was adopted:

"Resolved that in the opinion of this Board, the real and personal property of this State, as returned by the local assessors for the year 1890, is assessed at twenty-five per cent. of its fair cash value."

From the published report of said Board for the year 1891 (p. 9) it appears that the following resolution was adopted:

"Resolved that in the opinion of this Board, the real and personal property of this State, as returned by the Local Assessors for the year 1891, is assessed at an average rate not exceeding twenty-five per cent. of its fair cash value."

From the published report of said Board for the year 1893 (p. 10) it appears that the following resolution was adopted:

"Resolved that in the opinion of this Board, the real and personal property of this State, as returned by the Local Assessors for the year 1893, is assessed at an average rate not exceeding twenty-five per cent. of its fair cash value."

As to each of the years from 1873 to 1900, inclusive, except the years expressly above referred to, no resolution similar to those above

quoted was adopted; but the reports of said Board for each
108 year show that the column containing the assessment placed by said Board upon the capital stock of corporations, other than railroad companies, is entitled in the following language:

"Net assessment of capital stock, being excess of equalized value over the equalized value of tangible property."

109 Statement showing the capital stock and outstanding bonded indebtedness (as shown by Brown's Directory of American Gas Companies for 1900) of gas companies in Illinois, other than the People's Gas Light and Coke Company, together with the equalized value of the tangible property, and the "full value" of the capital stock and franchises of such companies as fixed by the state board of equalization for purposes of taxation in the year 1900.

	Capital stock.	Bonds.	Equalized value of tangible property.	Full value of capital stock and franchises as fixed by board.
Alton Ry. Gas & Electric Co	$500,000	$450,000	$39,276	$201,380
Aurora Gas Light Co	300,000	230,000	.....	25,000
Belleville Gas Light & Coke Co	50,000	17,000		
Union Gas & Electric Co. (Bloomington)	400,000	7,793	.....	163,965
People's Gas & Electric Light Co. (Canton)	50,000			
Centralia Light & Power Co	47,000	.....	5,100	30,500
Urbana & Champaign Gas & Electric Co. (Champaign)	500,000	435	25,045	250,000
Clinton Gas Co. (new Company)	50,000			
Danville St. Ry. & Light Co	700,000	525,000	85,000	425,000
Decatur Gas & Electric Co	400,000	372,000	35,481	250,000
Dixon Power & Lighting Co	100,000	38,500	.....	12,500
Du Quoin Light, Heat & Power Co	50,000	40,000	8,021	45,105
Elgin American Gas Co	100,000	305,000	.....	20,000
Northwestern Gas Light & Fuel Co. (Evanston)	2,000,000	.....	.....	25,000
Freeport Light & Fuel Co	100,000	36,000	5,563	57,815
Galena Gas Light Co	63,000			
Galesburg Gas & Electric Light Co	350,000	350,000	21,199	155,995
Galva Gas Light & Coke Co	30,000			
110 Jacksonville Gas Light & Coke Co	200,000	33,500	19,307	101,535
Joliet Gas Light Co	300,000	285,000	27,744	188,720
Citizens' Gas Co. (Kankakee)	150,000			
Kewanee Light & Power Co	100,000	80,000	6,315	56,575
La Grange Gas Co. (New Company)	100,000			
Peru-La Salle Gas Light & Power Co. (La Salle)	130,000	100,000		
Lincoln Gas Co	100,000	85,000	4,800	90,000
Litchfield Light, Heat & Power Co	50,000	35,000	263	6,315
Macomb Electric Light & Gas Co	50,000			
Mattoon Gas Light & Coke Co	50,000	50,000	.....	12,500
Mendota Light & Heat Co	25,000	8,800	.....	5,000
People's Power Co. (Moline)	300,000	290,000	17,923	115,000
Monmouth Gas Co	30,000	20,000	8,500	42,500
Morris Gas Co	40,000	20,000	1,496	12,480
Murphysboro Water Works, Electric & Gas Light Co	80,000	80,000	10,817	56,586
Ottawa Gas Light & Coke Co	100,000	.....	3,822	24,110
Paris Gas Light & Coke Co	50,000	.....	.....	10,000
Pekin Light, Heat & Power Co	100,000	100,000	7,734	63,670
People's Gas & Electric Co. (Peoria)	500,000	.....	37,422	212,110

Statement showing the capital stock, etc.—Continued.

	Capital stock.	Bonds.	Equalized value of tangible property.	Full value of capital stock and franchises as fixed by board.
Peoria Gas Light & Coke Co	$300,000	.....	$47,200	$236,000
Quincy Gas & Electric Co	600,000	$600,000	31,255	300,000
Rockford Gas Light & Coke Co	300,000	485,000	16,754	125,000
Springfield Gas Light Co	75,000	.....	27,264	136,320
Sterling Gas & Electric Light Co	40,000	36,000	5,560	27,800
Streator Gas & Light Co	100,000	60,000	.....	15,000
Citizens' Gas Light & Fuel Co. (Taylorville)	12,280	.....	553	10,000
North Shore Gas Co. (Waukegan)	1,000,000			
Ogden Gas Co. (Chicago)	5,000,000	.....	37,826	239,130
	$15,922,280	$4,782,235	$572,982	$3,948,610

111 *Statement Showing Aggregate Assessments Made by Local Assessors in the Years* 1873 *to* 1900.

1873	$1,210,108,863
1874	1,105,658,176
1875	1,025,428,289
1876	958,405,803
1877	892,380,972
1878	818,987,409
1879	744,742,846
1880	739,462,515
1881	746,034,852
1882	750,635,758
1883	756,422,291
1884	746,547,501
1885	733,533,951
1886	726,178,132
1887	726,078,638
1888	709,304,506
1889	711,515,026
1890	727,549,707
1891	737,504,791
1892	745,754,172
1893	760,837,855
1894	737,989,016
1895	743,840,153
1896	731,215,488
1897	713,443,706
1898	693,443,706
1899	895,869,090
1900	779,513,078

112 *Statement Showing Total Value of Personal Property as Assessed by Local Assessors for the Years* 1873 *to* 1900.

1873	$301,566,517
1874	267,469,471
1875	239,102,189
1876	212,893,542
1877	187,648,455
1878	169,815,099
1879	151,629,963
1880	165,091,710
1881	168,674,777
1882	167,304,024
1883	167,276,876
1884	159,767,095
1885	153,333,048
1886	147,998,610
1887	148,246,088
1888	140,990,725
1889	142,726,240
1890	141,981,057
1891	143,529,274
1892	143 799,494
1893	145,136,023
1894	127,973,857
1895	129,254,545
1896	120,428,916
1897	117,098,946
1898	114,215,007
1899	183,526,987
1900	166,542,866

113 *Statement Showing the Aggregate Value of Lands as Assessed by the Local Assessors During the Years* 1873 *to* 1900.

1873	$643,196,808
1874	586,022,941
1875	552,012,889
1876	522,394,667
1877	491,723,358
1878	447,942,329
1879	412,208,278
1880	398,338,737
1881	399,267,959
1882	395,757,100
1883	394,016,653
1884	389,109,470
1885	380,488,162
1886	371,940,467
1887	365,476,933

1888	352,995,885
1889	348,604,543
1890	345,750,094
1891	343,624,261
1892	339,043,920
1893	338,064,144
1894	334,030,873
1895	332,409,485
1896	329,474,124
1897	323,837,358
1898	319,047,998
1899	315,963,816
1900	309,394,797

114 *Statement Showing the Aggregate Value of Town and City Lots as Assessed by the Local Assessors During the Years* 1873 *to* 1900.

1873	$241,820,362
1874	245,854,685
1875	228,814,552
1876	218,055,488
1877	208,540,957
1878	197,031,558
1879	177,567,698
1880	173,260,959
1881	176,023,751
1882	185,592,977
1883	193,063,755
1884	195,642,562
1885	197,741,226
1886	203,835,559
1887	210,112,460
1888	213,400,542
1889	218,332,464
1890	237,654,199
1891	249,141,918
1892	260,408,429
1893	275,029,263
1894	273,693,566
1895	280,074,344
1896	279,307,191
1897	270,633,137
1898	258,323,686
1899	393,262,409
1900	300,913,328

115 *Statement Showing Aggregate Assessment on Town and City Lots in Cook County as Assessed by the Local Assessors During the Years* 1873 *to* 1900.

1873	$90,447,759
1874	100,689,670
1875	97,795,613
1876	96,789,412
1877	94,637,338
1878	95,374,127
1879	85,791,192
1880	85,635,165
1881	87,192,987
1882	95,448,675
1883	101,456,866
1884	103,408,025
1885	107,295,606
1886	112,994,128
1887	119,437,668
1888	123,132,781
1889	126,795,669
1890	143,347,119
1891	150,690,710
1892	157,446,400
1893	164,389,327
1894	165,045,268
1895	169,252,421
1896	167,671,344
1897	158,767,689
1898	146,672,035
1899	285,717,467
1900	192,550,863

Comparative Statement Showing State Aggregate Average of the Value of Personal Property, as Assessed by Local Assessors for the Years 1873 to 1900

	Horses.	Cattle.	Mules and asses.	Sheep.	Hogs.	Steam engines, including boilers.	Fire or burglar-proof safes.	Billiard tables, etc.	Carriages and wagons.	Watches and clocks.	Sewing and knitting machines.	Pianos.	Melodeons and organs.
1873....	$52.41	$17.74	$59.09	$1.96	$3.17	$679.05	$105.80	$92 58	$35.86	$6.89	$32.50	$142.95	$60.39
1874....	45.92	15.63	50.39	1.62	2 60	582.67	84.63	75.21	31.22	5.61	25.31	117.63	53 02
1875....	40.95	14.27	45.75	1.51	2.90	504.27	76.83	65.56	27.72	5.65	21.56	102.57	47.22
1876....	36.92	13.37	40.70	1.44	3.35	408.85	65.85	55.86	24.92	4.55	18.32	87.68	41.58
1877....	33.90	12.38	36.92	1.30	2.56	364.89	58 94	43.14	21.94	4.01	14.01	76.43	35.99
1878....	29.63	11.19	32.39	1.15	1.50	321.94	53.30	39.14	18.88	3.62	10.44	67.42	28.95
1879....	26.63	10.15	28.82	1.10	1.36	194.15	45.19	34.23	17.13	3.18	8.42	59.23	24.66
1880....	26.56	9.95	29.77	1.29	1.53	247.99	40.71	30.44	16 56	3.11	7.71	54.68	22.36
1881....	27.66	10.04	31.50	1.29	1.86	236.64	40 23	29.98	17.01	3.00	7.29	52.42	20.55
1882 ..	28.22	10.18	31.17	1.28	2.03	247.88	38.71	31.24	15.34	2.94	6.79	51.12	19.42
1883...	28.89	10.45	32.21	1.25	2.23	240.05	32.56	31.10	14.42	2.83	6.39	49.21	18.20
1884....	28.41	10.13	31.20	1.16	1.85	221.29	33.75	31.02	13.62	2.78	5.97	46.11	16.92
1885....	27.16	9.61	29.26	.99	1.55	205.57	31.92	28.83	12.52	2.62	5.58	45.88	14.89
1886....	26.13	8.84	27.39	.95	1.32	184.78	29.29	27.55	11.72	2.53	5.25	42.39	14.09
1887....	25.80	8.31	26.79	.96	1.48	176.79	28.39	24.92	11.38	2.47	5.12	40.18	13.41
1888....	24.88	7.11	25.03	.96	1.42	167.35	26.50	24.27	10.71	2.39	4.74	38.45	12.46
1889....	24.21	6.59	24.46	.98	1.52	154.37	26.10	23 39	10.10	2.27	4.53	37.00	11.74
1890....	22.96	6.43	23.44	1.02	1.39	151.97	25.73	22.89	9.67	2.19	4.46	37.16	11.25
1891....	21.96	6.30	22.94	1.07	1.25	149.14	25.82	21.66	9.35	2.16	4.34	34.29	10.51
1892...	20.74	6.07	21.64	1.06	1.26	142.50	25.00	22.09	9.10	2.09	4.23	33.65	10.11
1893....	19.41	6.34	20.69	1.04	1.69	138.51	23.06	21.09	9.15	2.05	4.12	32.63	9.75
1894....	14.87	6.26	16.63	.84	1.43	130.37	21.84	19.31	8.55	1.98	3 98	29.74	9.11
1895....	12.84	6.68	13.84	.85	1.42	125.87	21.22	18.38	8.09	1.92	3.94	29.08	8.63
1896....	11.33	6.49	12.15	.80	1.26	121.88	20.54	18.59	7.83	1.91	3.74	27.49	8.22
1897....	10.49	6.58	11.14	.82	1.29	117.99	20.67	16.91	7.29	1.78	3.59	26.58	7.90
1898....	10.64	6.63	11.69	.86	1.22	112.96	19.40	16.43	7.02	1.72	3.48	25.75	7.36
1899....	8.20	5.03	8.83	.72	.84	94.88	10.16	13.10	4.71	1.64	2.21	19 53	4.95
1900....	9.06	4.92	9.88	.76	1.07	85.99	9.41	7.92	4.45	1.52	1.99	18.09	4.39

118 Twenty-ninth: Said Circuit Court erred in admitting and receiving in evidence, over the objection and exception of Defendants' counsel, the testimony of Edward J. E. Ward, as follows:—

I have been familiar for over twenty years with the concern known as the Union Stock Yards and Transit Company; said Company is a very large market for the sale of all sorts of live stock, cattle, hogs, horses and so forth. It is the sole market of the kind in Cook County for cattle, hogs, sheep and live-stock generally. I have procured, under direction, the annual reports of the Union Stock Yards and Transit Company, and from those reports and from other data I have prepared a statement showing the number of cattle, the hogs and horses received at the Union Stock Yards and Transit Company during the year- 1899 to 1901 inclusive, the total value of each kind of animals, and average value per head, compiled from those statistics. This paper which I now show you, is that compilation.

(Witness here produced Ward Exhibit B, November 12, 1903.)

From this compilation it appears that during the year 1899, 2,514,-446 head of cattle, of a total value of $123,207,854, or an average value of $49 per head, was received; in the same way, for the year 1900, there were 2,729,046 head of cattle, of a total value of $136,-452,300, of the average value per head of $50; and in the year 1901, without specifying the name or number of cattle, the average price received was $48 per head. In 1899 the average price per head was $9.74.

119 For the year 1900, the average price per hog received was $11.84; for the year 1901, $13.00. With reference to horses, the average prive received in 1899 was $112.50; in 1900, $116; in 1901, $120. All these figures are taken from the annual reports of the Union Stock Yards and Transit Company that have been referred to.

Thirtieth: The said Circuit Court erred in admitting and receiving in evidence, over the objection and exception of defendants' counsel, the document known as Ward Exhibit B, November 12, 1903, which was as follows:—

WARD EXHIBIT B, Nov. 12, '03.

Statement showing the number of cattle, hogs and horses sold at the Union Stock Yards, Chicago, during the calendar years 1899 to 1901, inclusive, the total value of each kind of animals and the average value per head. Compiled from the annual statistical reports of the Union Stock Yard and Transit Company for the years indicated.

Cattle.

Year.	Number of head.	Total value.	Average per head.
1899	2,514,446	123,207,854	$49
1900	2,729,046	136,452,300	50
1901	3,031,396	145,507,008	48

120

Hogs.

1899	8,177,870	$79,734,233	9.74
1900	8,109,064	96,092,408	11.84
1901	8,290,494	107,776,422	13.00

Horses.

1899	111,611	12,556,237	112.50
1900	99,010	11,485,160	116.00
1901	109,353	13,122,360	120.00

Thirty-first: The said Circuit Court erred in admitting and receiving in evidence over the objection and exception of defendants' counsel, a report from the Illinois State Board of Agriculture for December 1900, as follows:—

"Livestock, Hogs: There is a slight increase in the number of hogs assessed this year over 1899, the number reported being 2,829,960. In the Northern Division of the State there were 1,210,227; in the Central Division 1,138,979; and in the Southern Division 480,754. At the equalized value of $1.07 per head, they were worth $3,028,057.00. The number of corn fed hogs marketed was 2,348,855, or 83 per cent. of the number assessed, and their average live weight was 225. The heaviest hogs marketed were in Northern Illinois, where their average weight was 243 pounds. In the Central Division the average weight was 218 pounds and in the Southern Division 195 pounds. The total live weight of the hogs
121 marketed during the year was 527,833,094. The average price received of $4.35 per cwt. is the highest since 1894 and varied but little in different sections of the State. At this rate the total value of the hogs marketed would be $23,066,408, of which amount Northern Illinois received $10,609,820.00; Central Illinois $9,126,358; and Southern Illinois, $3,330,230.00."

"The following table shows assessed and marketed in 1899, as well as their weight and value for the last 45 years. For 1899, the assessor's returns of the number of hogs was 2,796,483, of a value of

$2,349,046.00. 83% is the estimated per cent. of the total crop that was marketed. The number of hogs that were marketed in that year was 2,321,060. The total gross weight per head was 234 pounds; the total gross weight 542,267,060 pounds. The value per cwt. gross, $3.60; and the total value of hogs marketed was $19,658,897.00.

"For the year 1900 the Assessors' returns were 2,829,960 hogs of the value of $3,028,057.00. 83% is the estimated per cent. of the total number that were marketed. The total number that were actually marketed is 2,348,855. The average gross weight per head was 225 pounds. The total gross weight, 527,833,094; the value per cwt. gross, was $4.35, and the total value received, from hogs marketed $23,066,408.00.

"More cattle were reported by the Assessors this year than last, 2,009,598 being returned. Of this number 1,085,050 were in Northern Illinois, 658,663 in Central Illinois, and 265,885 in the Southern Division of the State at the equalized value of $4.92 per cwt., (?) they were worth to the feeder $9,887,222. 23% of
122 the number assessed, or 462,197 were marketed, their average live weight being 1125 pounds. In the Northern Division of the State the average weight of the cattle marketed was 1115 pounds; in Central Illinois 1205 pounds; and in Southern Illinois but 968 pounds. The total weight of cattle marketed was 520,065,373 pounds. The average value of the cattle sold during the year was $4.25; and the total value $22,089,527.00,—the best returns for this class of live stock since 1884. Over half of this amount $11,586,603.00 should be credited to Northern Illinois, $8,209,791.00 to Central Illinois and $2,203,073 to Southern Illinois."

Thirty-second: The said Circuit Court erred in admitting and receiving in evidence, over the objection and exception of Defendants' Counsel, the document known as Ward Exhibit C, November 12, 1903, as follows:—

WARD EXHIBIT C., NOV. 12, '03.

Statement Showing the Number of Head of Horses, Cattle and Hogs in the State of Illinois, returned for taxation in 1900 by the Local Assessors, compared with the number of Head of Horses, Cattle & Hogs in the State of Illinois, on June 1st, 1900, according to United States Census Office returns.

Kind.	Number of head returned by local assessors in Illinois for 1900.	U. S. Census for June 1st, 1900.	Difference.
Horses	1,209,446	1,350,219	140,773
Cattle	2,438,275	3,104,010	665,735
Hogs	2,690,367	5,915,468	3,225,101

123 Thirty-third. The said Circuit Court erred in admitting and receiving in evidence, over the objection and exceptions

of defendants' Counsel, the following evidence admitted into the record between counsel only in the event that the same was competent and material to the issues:

"That the Union Stock Yards and Transit Company now owns and conducts in the City of Chicago a live stock yard and market for the reception, handling, sale and disposition of all kinds of live stock, and has continuously conducted and operated the same since 1865;

That at said market there is received annually a large number of horses, cattle, hogs, sheep and other live stock which are sent to said market to be sold and disposed of to purchasers there gathered from all parts of the United States and Europe;

That such live stock is received from all parts of the United States but chiefly from the territory lying west, north and south of the State of Ohio;

That in the course of business, as conducted at said market, the prices of all live stock sold in said market are recorded in books kept for that purpose by the Union Stock Yards and Transit Company, and that said Union Stock Yards and Transit Company annually and at the end of each calendar year or shortly thereafter compiled and tabulates the result of the trade in said live stock during said year at said market, and the prices realized for the said live stock, which tabulation of values is thereupon by the
124 Union Stock Yards and Transit Company printed and published generally in the form of the annual report heretofore produced and offered in evidence by the complainant at the hearing before the Master on November 12, 1903;

That from the annual report of said Union Stock Yards and Transit Company appears that the total receipts of live stock at said market since its establishment in the year 1865 up to and including the year 1901 were

65,125,851 Head of Cattle,
2,518,278 Calves,
202,197,439 Hogs,
52,142,667 Sheep,
1,644,620 Horses.

That the total sum realized for the live stock so received and sold at the said market during that period was the sum of $5,792,705,549.00."

Thirty-fourth. The said Circuit Court erred in admitting and receiving in evidence over the objections and exceptions of defendants' Counsel the testimony of Williston Fish, as follows:

I am a lawyer, in the employ of the Chicago Union Traction Company. I prepared the schedules of property for the Company for the years 1900, 1902, and 1903. I have made an investigation of the sales of stocks and bonds of the Chicago Union Traction Company and the Underlying Companies on the Stock Exchange during the entire existence of the Chicago Union Traction Company, and I have made a memorandum of the amount of such sales,
125 which is contained in this report. (Referring to Exhibit 1 to the deposition of Williston Fish.) I used the yearly re-

ports made by the newspapers called the Economist, published in Chicago, and giving the sales and prices for each year from 1899 to 1903, and I also obtained the reports from the daily papers, published in Chicago during that time. I have an intimate knowledge of the affairs of the Company and the market quotations for the last four years of the stocks and bonds of the Chicago Union Traction Company, and its underlying companies, on the stock exchange, do not give a fair indication of the real value of the property of said company. I have spent about a third of my time since 1899, in making inventories, and examining the tangible personal property of said Chicago Union Traction Company and the underlying Companies. On April 1st, 1900, all of the property of the Chicago Union Traction Company, including realty and personalty and franchises was worth less than $27,000,000, and all the property of the underlying companies at the same time was worth $12,242,972.12.

Thirty-fifth. The said Circuit Court erred in admitting and receiving in evidence, over the objection and exception of Defendants' Counsel, the document known as Exhibit 1 of the testimony of W. Fish 11/25/'03 as follows:

The following statement shows the high and low values on the Chicago Stock Exchange and the amounts dealt in of the stocks and bonds named, in each of the years 1898, 1900, 1901, 1902, and in 1903 up to November.

126 Chicago Union Traction Company.

Common Outstanding, 20,000.

	Date low.	Low.	High.	Date high.	Sales.
1899	Dec. 22	23	39	Aug. 25	40,066
1900	Dec. 15	8½	29½	Jan. 5	47,577
1901	May 9	9½	20⅜	May 28	126,544
1902	Jan. 16	10	22⅞	Apr. 29	134,032
1903	June 19	3½	17	Jan. 13	23,245

127 Chicago Union Traction Company.

Preferred Outstanding, 12,000,000.

	Date low.	Low.	High.	Date high.	Sales.
1899	Dec. 22	72	87¾	Aug. 31	28,158
1900	Dec. 15	40	78½	Jan. 2	45,211
1901	Dec. 19	47	61½	June 7	41,222
1902	Dec. 23	45	59½	Apr. 29	19,420
1903	Apr. 22	26	51	Jan. 13	8,365

128 West Chicago Street Railway Company.

Issued	13,189,000
Owned by C. U. T. Co.	3,216,000
Outstanding	9,973,000

Year.	Date low.	Low.	High.	Date high.	Sales.
1899	Jan. 3	91⅝	124¼	Sept. 1	127,989
1900	Dec. 22	96½	113	Feb. 5	31,405
1901	Nov. 21	90	108	Mar. 15	30,108
1902	Dec. 15	83	103¼	May 2	14,680
1903	Oct. 10	50	93	Jan. 14	8,717

129 North Chicago Street Railroad Company.

Stock issued	7,920,000
Owned by C. U. T.	2,022,600
Outstanding	5,897,400

Year.	Date low.	Low.	High.	Date high.	Sales.
1899	Jan. 24	217	254½	May 1	20,256
1900	Dec. 26	190	228	Feb. 7	3,729
1901	Dec. 2	180	207	Mar. 1	4,694
1902	Dec. 22	158	199¾	Apr. 29	4,917
1903	Oct. 5	95	175	Jan. 14	4,122

130 Chicago Consolidated Traction Company.

4½'s, $—.

Year.	Date low.	Low.	High.	Date high.	Sales.
1899					
1900					
1901					
1902	Feb. 11	67	80	Mar. 27	219,000
1903	Oct. 20	60	70½	Apr. 2	136,000

131 North Chicago Street Railroad Company.

First Mortgage, 5's, 1906 { Total, 1906 & 1909, $3,171,000.

The 1906's are:

Year.	Date low.	Low.	High.	Date high.	Sales.
1899	July 21	105¼	108½	Oct. 27	23,500
1900	Dec. 31	104⅜	105⅝	Dec. 19	16,000
1901	Oct. 4	104	104½	July 3	10,500
1902	Feb. 28	103	103	May 5	31,500
1903	June 4	97	100	Mar. 9	19,000

The 1909's are:

1899					
1900	Nov. 19	105⅞	106⅜	May 16	24,000
1901	Oct. 9	106	106½	Aug. 6	19,000
1902	Apr. 2	104	104¼	Feb. 24	11,000
1903	June 5	97	99½	Mar. 26	9,000

132 North Chicago City Railway Company.

4½'s, 2,500,000.

Year.	Date low.	Low.	High.	Date high.	Sales.
1899	Nov. 21	107	109⅜	July 14	23,000
1900	Feb. 9	107⅛	108¾	June 5	54,000
1901	Dec. 17	105	108½	May 21	53,000
1902	Aug. 1	105	107	Apr. 10	14,000
1903	May 7	98	103	Jan. 29	12,000

133 West Chicago Street Railroad Company, Consolidated.

5's, $6,114,000.

Year.	Date low.	Low.	High.	Date high.	Sales.
1899	Jan. 3	94¾	107½	July 12	2,924,000
1900	Dec. 17	100	104½	Jan. 5	900,000
1901	Dec. 26	98⅞	104½	Apr. 13	749,500
1902	Dec. 11	94	101½	Apr. 4	340,000
1903	Sept. 12	80	97¼	Jan. 14	135,000

134 West Chicago Street Railroad Company.

Debenture 6's, $497,000.

Year.	Date low.	Low.	High.	Date high.	Sales.
1899	Mar. 6	100	102	June 14	158,000
1900	July 19	100	100½	Oct. 30	89,000
1901	Nov. 25	100	100¾	Sept. 4	37,000
1902	Sept. 23	99½	100¼	May 5	9,000
1903	May 31	87	106	Jan. 13	19,000

135 West Chicago Street Railroad Company.

1st Mortgage, 5's.

Year.	Date low.	Low.	High.	Date high.	Sales.
1899	Apr. 11	109	112	July 13	104.000
1900	Jan. 20	108	111½	June 21	111,000
1901	Dec. 14	109½	111	May 13	123,000
1902	Dec. 29	104¾	109½	May 1	141,000
1903	July 23	96	104	Feb. 25	78,000

136 Chicago West Division Railway Company.

4,016,000 4½'s.

Year.	Date low.	Low.	High.	Date high.	Sales.
1899					
1900	Apr. 19	107¾	109	Apr. 4	7,000
1901	Oct. 22	108½	110	Mar. 7	6,000
1902	Mar. 24	109½	109½	Nov. 3	5,000
1903	Oct. 1	93	105	Jan. 20	35,000

137 Thirty-sixth. The said Circuit Court erred in admitting and receiving in evidence over the objection and exception of defendants' counsel the testimony of William G. Beale, as follows:—

"I appeared before the State Board of Equalization, and gave to said Board detailed information in reference to the value of the property of the Chicago Edison Company, and handed said Board a pamphlet entitled 'Report of Chicago Edison Company for the fiscal year ending March 31, 1900,' which was offered and received in evidence as Complainant's Exhibit A 10/29/02, H. W. B.; that I compiled the information contained in said report in reference to the value of the capital stock, and the amount of bonded indebtedness. A part of the information I got from direct investigation, and part from public reports, and a part from employing an agent to go out and find the facts.

Thirty-seventh. The said Circuit Court erred in admitting and receiving in evidence over the objection and exception of Defendants' Counsel, the documents marked Complainant's Exhibit A, which document is attached to the bill of complaint in the case of the Chicago Edison Company *vs.* Samuel B. Raymond *et al.*, in the Circuit Court of the United States for the Northern District of Illinois, No. 26,163.

138 Thirty-eighth. The said Circuit Court erred in admitting and receiving in evidence over the objection and exception of defendants' counsel, the document entitled Complainant's Exhibit B, which document is attached to the bill of complaint in the case of the Chicago Edison Company *vs.* Samuel B. Raymond *et al.*, now pending in the Circuit Court of the United States for the Northern District of Illinois, No. 26,163.

Thirty-ninth. The said Circuit Court erred in admitting and receiving in evidence, over the objection and exception of defendants' counsel, the testimony of Arthur D. Wheeler, as follows:

"I appeared before the State Board of Equalization while it had under consideration the proper capital stock assessment for the Chicago Telephone Company for the year 1900, and answered questions and gave information to said Board, concerning the capital stock valuations of said Company. One of the members of the Capital Stock Committee of the Board stated that the Committee could not or would not act until they had received word as to the wishes or ideas of the Court. At about this stage one of the attorneys for the relators in the Mandamus proceeding came into Court with a paper in his hand, and I was ushered out, and fifteen or thirty minutes after that the Committee reported the assessment against the Chicago Telephone Company, which was afterwards accepted by the State Board.

139 Fortieth. The said Circuit Court erred in admitting and receiving in evidence over the objection and exception of defendants' counsel, the following evidence of Fred E. Smith:

"The ordinary operation of a street railroad results in a gradual depreciation of its plant. A charge ought to be made every month on account of such depreciation. Such depreciation in the case of the Chicago Union Traction Company amounts to a little over seven and one half per cent. per annum of the entire value of the property. No such depreciation had been charged against the Chicago Union Traction Company on its books. I have prepared a statement of the income and expenses of the Chicago Union Traction Company for the fiscal year ending June 30, 1900. It is that which I hand you. (Referring to Complainant's Exhibit 1, set forth in the Master's report, filed June 9, 1902.) I have made a compilation upon the lines laid down by Judges Grosscup and Humphrey in their opinion, as to what the taxes would amount to if they were fixed at the rate of 8.035. I capitalized the true net income of -2,057,352.61 upon a six per cent. basis, which resulted in a capitalization of $34,289,210.17. I equalized these on a seven per cent. basis, which produces a capitalization of $24,002,447.12; took one-fifth of this for the assessed value, which was $4,800,489.42. As computed on the basis of that rate, 8.035 it produces $385,719.32.

I then deducted the taxes already paid of $239,097.22, leaving the amount to be paid $146,622.10.

140 Forty-first. The said Circuit Court erred in admitting and receiving in evidence, over the objection and exception of Defendants' counsel, Exhibit Number 1, offered and received in evidence in the case of the Chicago Union Traction Company *vs.* Samuel B. Raymond *et al.* No. 26,609, contained in the Master's Report, filed in said cause, June 9, in the following words:

Chicago Union Traction Company.

Income Account, Year Ending June 30th, 1900.

Income from all sources:		
Passenger Receipts	$7,468,797.98	
Chartered Cars	2,122.50	
Mail	6,477.58	
Advertising	33,576.95	
Rent of Land and Buildings	35,622.14	
Rent of Tracks and Terminals	10,000.00	
Interest on Deposits	17,690.11	
Miscellaneous	3,336.03	
Total Income from all sources		$7,577,623.29
Expenses:		
Maintenance—Way & Structures	193,666.90	
Maintenance—Equipment	381,082.87	
Transportation	2,836,167.01	
General Expenses	1,119,962.07	
Interest on Loans	41,776.80	
141 Depreciation, being 6% of $9,364,928.57, full value of personal property, said full value being obtained upon the assumption that the Assessors' full valuation of said personal property for the year 1900, to-wit: $6,555,450, was only 70% of real value	561,895.71	
Total Expenses		$5,134,551.36
Net earnings applicable to payment of Bond interest, rentals and taxes		$2,443,071.93
Deducting taxes for 1900, already paid		239,097.22
Leaving net income		2,203,974.71

This amount will be further reduced by the amount of taxes to be paid under the decision rendered by Judges Grosscup and Humphreys."

Forty-second. The said Circuit Court erred in admitting and receiving in evidence, over the objection and exception of Defendants' Counsel, oral testimony for the purpose of explaining, varying and contradicting the official acts, records and proceedings of the State Board of Equalization for the years 1900 and 1901, wherein and whereby said Board made the assessment against the property of the complainant sought to be enjoined in this cause.

Forty-third. The said Circuit Court erred in refusing and failing to hold that parol evidence was incompetent, for the purpose of explaining, varying or contradicting the official acts, records and proceedings of the State Board of Equalization of the State
142 of Illinois, in reference to the assessments on the capital stock of the complainant, made by the said board in the year 1901, for the year 1900.

Forty-fourth. The said Circuit Court erred, in failing and refusing to hold that inasmuch as complainant contributed to the expense of said Mandamus suit, instituted in the Circuit Court of Sangamon County, Illinois, against the State Board of Equalization of the State of Illinois, for the purpose of compelling said Board to assess the capital stock of the complainant and the other corporations therein named, for the year 1900, and inasmuch as the complainant participated in directing and controlling the conduct of said litigation, therefore the complainant was concluded by the outcome of said suit, and the proceedings of said State Board of Equalization, and the assessment of the Capital Stock of Complainant for the year 1900, made by the said State Board of Equalization of the State of Illinois, in obedience to said writ of Mandamus, and said Circuit Court erred in failing and refusing to hold, that all of the aforesaid proceedings are *res adjudiciata*, and constitute an estoppel by judgment and verdict against the Complainant, conclusively establishing the validity and regularity of the said assessment complained of in the bill of complaint in this cause.

In all of which respects these defendants claim that the aforesaid judgment and decree of said Circuit Court are erroneous,
143 illegal and invalid, and therefore these defendants pray that the said judgment and decree may be reversed, set aside and held for nought.

HARRY A. LEWIS,
WILLIAM F. STRUCKMAN,
JAMES HAMILTON LEWIS, AND
DAVID K. TONE,
Solicitors for the Above-named Defendants.

(Endorsed:) Filed Aug. 10, 1906. Marshall E. Sampsell, Clerk.

144 And on to-wit: the tenth day of August, being one of the days of the regular July term of said Court, 1906, in the record of proceedings thereof in said entitled cause before the Hon. Peter S. Grosscup, Circuit Judge, appears the following entry to-wit:

Order of August 10, 1906, *Allowing Appeal.*

26165.

CHICAGO CITY RAILWAY COMPANY
vs.
SAMUEL B. RAYMOND, County Treasurer, Cook County, Illinois, and *ex-officio* County Collector, Cook County, Illinois, and JOHN J. HANBERG, His Successor in Office as County Treasurer of Cook County, Illinois, and *ex-officio* County Collector of Cook County, Illinois and *ex-officio* Town Collector of the Town of South Chicago, and MAURICE FITZGERALD, Town Collector of the Town of South Chicago, and THE CITY OF CHICAGO.

Upon motion of David K. Tone, Esq., solicitor for the defendants, and on filing petition for an Order allowing an appeal, together with assignment of errors, it is Ordered that an appeal be and is hereby allowed to the Supreme Court of the United States from the decree entered herein on the twenty-fifth day of July, 1906, and that the amount of the bond upon appeal be and hereby is fixed at the sum of two hundred dollars. Said bond to be approved by the Clerk of this Court.

145 And on to-wit: the fifth day of September, 1906, there was filed in the clerk's office of said Court in said entitled cause a certain Bond on Appeal in words and figures following to-wit:

146 Know all men by these presents, That we, Samuel B. Raymond, County Treasurer of Cook County, Illinois, and *ex-officio* County Collector of Cook County, Illinois, and John J. Hanberg, his successor in office as County Treasurer of Cook County, Illinois, and *ex-officio* County Collector of Cook County, Illinois, and *ex-officio* Town Collector of the Town of South Chicago, and Maurice Fitzgerald, Town Collector of the Town of South Chicago, and The City of Chicago, as principal and National Surety Company, as surety, are held and firmly bound unto Chicago City Railway Company in the full and just sum of Two Hundred ($200.00) Dollars, to be paid to the said Chicago City Railway Company its certain attorney, successors or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly and severally, by these presents.

Sealed with our seals, and dated this 30th day of August, in the year of our Lord one Thousand nine hundred and six.

Whereas, lately at a session of the Circuit Court of the United States for the Northern District of Illinois, Eastern Division, on July 25th, A. D. 1906, in a suit depending in said Court, between Chicago City Railway Company, complainant, and Samuel B. Raymond, County Treasurer of Cook County, and *ex-officio* County Collector of Cook County, Illinois, and John J. Hanberg, his successor in office as County Treasurer of Cook County, Illinois, and *ex-officio* County Collector of Cook County, Illinois, and *ex-officio* Town Collector of

the Town of South Chicago, and Maurice Fitzgerald, Town Collector of the Town of South Chicago, and The City of Chicago, defendants, a decree was rendered against the said defendants above named, restraining them from collecting certain taxes levied against the
147 property of complainant, and the said defendants above named, having obtained an appeal to the Supreme Court of the United States and filed a copy thereof in the Clerk's office of the said Court to reverse the decree in the aforesaid suit,

Now, the condition of the above obligation is such, that if the said Samuel B. Raymond, County Treasurer of Cook County, Illinois, and *ex-officio* County Collector of Cook County, Illinois, and John J. Hanberg, his successor in office as County Treasurer of Cook County, Illinois, and *ex-officio* County Collector of Cook County, Illinois, and *ex-officio* Town Collector of the Town of South Chicago, and Maurice Fitzgerald, Town Collector of the Town of South Chicago, and The City of Chicago, shall prosecute their appeal to effect, and answer all damages and costs if they fail to make their plea good, then the above obligation to be void; else to remain in full force and virtue.

S. B. RAYMOND, [SEAL.]
County Treasurer of Cook County and ex-officio County Collector of Cook County, Illinois.

JOHN J. HANBERG, [SEAL.]
Successor to Samuel B. Raymond, as County Treasurer of Cook County, Illinois, and ex-officio County Collector of Cook County Illinois, and ex-officio Town Collector of the Town of South Chicago.

MAURICE FITZGERALD, [SEAL.]
Town Collector of the Town of South Chicago.

[SEAL.] CITY OF CHICAGO,
By E. F. DUNNE, *Mayor.*

Attest:
A. C. ANSON, *City Clerk.*

NATIONAL SURETY COMPANY,
[SEAL.] CHARLES S. CRAIN,
Attorney in Fact.

Approved:
MARSHALL E. SAMPSELL, *Clerk.*

(Endorsed:) Filed Sep. 5, 1906. Marshall E. Sampsell, Clerk.

148 UNITED STATES OF AMERICA,
Northern District of Illinois, Northern Division, ss:

In the Circuit Court of the United States, Northern District of Illinois, Northern Division.

In Chancery. No. 26165.

CHICAGO CITY RAILWAY COMPANY
vs.
SAMUEL B. RAYMOND ET AL.

* * * * * * * *

149 2.00 p. m., March 3, 1904, adjourned to new notice.

10.00 a. m., April 11, 1904.
Parties met pursuant to notice, and adjourned to 10.00 a. m. April 14, 1904.

10.00 a. m., April 14, 1904, adjourned to 2.00 p. m., April 18, 1904.

10.00 a. m., April 18, 1904.
Adjourned to 2.00 p. m., April 26, 1904.

2.00 p. m., Tuesday, April 26, 1904.
Continuation pursuant to adjournment.
Present: On behalf of Complainant, John P. Wilson, Esq. On behalf of Defendants, Mr. Wilkerson, Mr. Shepard, Attorney General Hamlin.

Mr. SHEPARD: It is stipulated and agreed by and between the parties hereto that the authorized capital stock of the Chicago City Railway Company on April 1, 1900, was $14,000,000.

150 That there was outstanding on April 1, 1900, $13,000,000.

That the range of prices for the stock of the Chicago City Railway Company during the year 1900 on the Chicago Stock Exchange was from $242. per share to $285. per share, there being but one share sold during that year at $285. and reported on the Chicago Stock Exchange.

That the bonded ind-btedness of the Chicago City Railway Company on April 1, 1900, was $4,619,500.;

That there was paid during and for the year 1900 on the stock of the Chicago City Railway Company a dividend of twelve per cent. per share, being $12.00 per share.

Mr. WILKERSON: We offer in evidence the testimony of David G. Hamilton and Exhibits 10, 11 and 12, produced in connection therewith, as appearing in the Abstract of Record in the case of the State Board of Equalization, *at al., vs.* People of the State of Illinois, etc., already produced by counsel for the Complainant;

We also offer page 91 of the Abstract, and page 93 of the Abstract;

Also the statement with reference to the Chicago City Railway Company on pages 107, and 108 of the Abstract, giving the authorized capital stock, as there given, at $14,000,000.

We also offer certified copy of the rules of the States Board of Equalization, appearing on pages 186 to 189 of the Ab-
151 stract.

Also the deposition of A. W. Miller on page 175 of the Abstract; and that of Philip Knopf on page 177 of the Abstract.

Also, the testimony of W. H. Eubanks appearing on page 190 of the Abstract; also the statement produced in connection with the testimony of that witness appearing on page 199 of the Abstract, being the statement as to the Chicago City Railway Company on that subject.

Also, the statements of the Chicago City Railway Company to the State Board of Equalization appearing on pages 206, 272, and 275 of the Abstract.

It is stipulated and agreed by and between the parties hereto that said portions of said Record may be treated with the same effect as if the witnesses themselves were produced and examined in this case, and the original documents themselves produced; the Complainant reserving the right to object on the grounds of irrelevancy or immateriality.

(Said portions of said Abstract thus offered in evidence are in words and figures as follows, towit:)

152 DAVID G. HAMILTON, called for petitioners, testified:

I reside in Chicago. I am President of the Chicago City Railway Company; have been since April, 1899. Before I was elected president I was director for one year and vice-president for twelve years, altogether director for three years. The location of that company is Chicago, Illinois.

Q. What was the amount of the authorized capital stock of that company?

(Objected to by respondents as incompetent, immaterial and irrelevant.)

The COURT: I suppose there will be a great many questions as to the admissibility of evidence arise in this case, and in order to save time and not argue each of the questions as they arise I will hear the evidence and they can be disposed of on the argument of the case.

Mr. MILLER: Might not we ask a ruling from the court upon the admissibility of evidence; the court takes the double function of court and jury, and it seems to us we ought to be permitted, counsel on both sides, to have rulings of the court upon the admissibility of the evidence; we would like to know what is competent and what is not.

The COURT: As I suggested on a hearing without a jury if
153 these questions are to be discussed and passed upon as we go along it will take up more time than it would to hear

the evidence and proceed, unless it is something at once seen cannot be material or competent.

Mr. MILLER: We have not any desire to take up the time of the court further than the court should see fit to suggest, but it is difficult for counsel for defendants, when they come to present their case, to judge what evidence is necessary until they know what evidence is in the case and is competent upon the other side; and if the evidence upon the other side should, as we conceive will be the case, prove to be entirely incompetent it seems to me counsel for defendants should know whether that evidence is in the case or not. Of course when we try it before a jury we know that, and so, when we come to put in our evidence against theirs, what evidence to meet and answer. I suppose this evidence is offered as tending to show something of the value of the capital stock of the Chicago City Railway and on our side of it we conceive that evidence to be incompetent, immaterial and irrelevant.

The COURT: Well, the objection is overruled; it is competent evidence.

(To which ruling respondents except.)

A. The amount of the authorized capital stock on April 1, 1900, was $14,000,000.

154 That capital stock is divided and was divided on April 1, 1900, into 140,000 shares.

Q. What was the amount of the capital stock paid up of the Chicago City Railway Company on April 1, 1900?

(Obj. to by respondents as incompetent, irrelevant and immaterial. Objection overruled; respondents except.)

A. $13,000,000. (Witness at request of counsel produces paper and continues:) This paper is the original report made by the company to its stockholders for year ending Dec. 31, 1899. There was no other report made by this company to its stockholders after December 31, 1899, and on or before April 1, 1900. (Said paper marked exhibit 10.)

(Another paper produced and handed witness.)

This paper is the annual report of the president dated January 15, 1901. It is the original made by the company to its stockholders. There was no other report made by the company to its stockholders concerning its assets and liabilities on or after April 1, 1900, and before January 15, 1901. (Said paper is marked exhibit 11.) I brought an abstract of the record of transfers of stock. It is a statement of the number of transfers of stock of this company made upon each and every day during the months of March and April, 1900. It was made up from the stock ledger.

155 Mr. MILLER (for respondents): I make no objection that this is not the original book, I make the same objection to it that I would if the original book (stock Ledger) was here.

(Said paper is marked Exhibit "12.") I don't know the value of the shares of the capital stock of the Chicago City Railway Company on April 1, the market value on April 1, 1900.

Exhibit "10" is signed by me. It is true and correct report. The statements contained in that document are true.

(Obj. to by respondents as incompetent, immaterial and irrelevant. Objection overruled; respondents except.)

Mr. GRAHAM: May it please your Honor, the rule of practice here has been that an exception goes with every overruled objection without claiming it specifically, I suppose that rule obtains now.

The COURT: Yes, sir.

Q. Now then, Mr. Hamilton, can you tell from this document what the net income of the company was for the year ending December 31, 1899?

(Obj. to by respondents as above; overruled; respondents except.)

A. Yes, sir, it was $1,660,884.63.

Q. What was the dividend paid on the capital stock of the company for the year ending the same date?

(Obj. to by respondents as above; overruled; re——

156 A. $1,499,997.

Q. What was the surplus for the year ending at the same time?

(Same obj.; overruled; respondents except.)

A. $160,887.63.

Q. State the percentage of net income to the capital stock for the year ending at that time?

(Same obj.; overruled; exception by respondents.)

A. On the average issue of capital stock for the year it was 13.287%. The rate of dividend paid for the year ending December 31, 1899, on the average capital stock outstanding for the year was 13.287%. And the surplus for the year as testified to represents what remained after paying that dividend on the capital stock. Exhibit "11" is signed by me. That is true and correct statement. And the statements made in it are true and were at that time.

Q. Now, then, tell me if you can, the net income of the Chicago City Railway for the year ending December 31, 1900.

(Obj. to by respondents as incompetent, immaterial and irrelevant; overruled; respondents except.)

A. $1,680,301.04.

Q. What dividends were paid on the capital stock for that year, state it both by the percentage and rate and the amount.

157 (Obj. to by respondents as above; overruled; respondents except.)

A. 12% on the average capital stock; $1,575,000. Surplus for that year, $105,301.04. The percentage of net income to the capital stock for that year, on the average capital stock outstanding for the year was 12.8%. Bonds it owed on April 1, 1900, were $4,619,500.

I don't know what the market value of those bonds was on or immediately before or after April 1, 1900. I believe the statements contained in this Exhibit "12" to be correct.

Counsel for petitioners offers in evidence document marked Exhibit "10."

(Obj. to by respondents as incompetent, immaterial and irrelevant; overruled; respondents except.)

"EXHIBIT 10."

Said Exhibit "10" dated January 15, 1900, shows as to Chicago City Railway Company for year 1899:

Total Gross Earnings.

Passenger Receipts	$5,162,665.00
Income from other sources	31,774.40
(Increase $1,425.68.)	
Total	$5,194,439.40
(Increase $361,633.59.)	

158 Total Expenses.

Operating expenses (all expenses except Interest on bonded indebtedness	$3,325,677.27
(Increase $399,186.90.)	
Interest on bonded indebtedness	207,877.50
(The same in 1898.)	
Total	$3,533,554.77
(Increase $309,186.90.)	
Net Income	1,660,884.63
(Increase $52,446.69.)	
Dividends paid 12%	$1,499,997.00
(Increase $59,997.)	
Surplus for year	$160,887.63
(Increase $7,550.31.)	

Percentage of Net Income to Capital Stock.

On $12,500,000 in 1899 ($12,000,000, for first six months of 1899 and $13,000,000 for second six months of 1899)	13.28%
On $12,000,000 in 1898	13.404%

Disposition of New Income.

Dividends paid	12%
Credit to Surplus	1.287%
	13.287%

159 Table of Percentages—Expenses to Receipts.

Percentage of operating expenses to passenger receipts... (Increase 3.45%.)	64.42%
Percentage of operating expenses to total gross earnings.. (Increase 3.47%.)	64.02%

Counsel for petitioners offer in evidence document marked Exhibit "11."

(Obj. to by respondents as incompetent, immaterial and irrelevant; overruled; respondents except.)

Exhibit "11" dated January 15, 1901, shows as to Chicago City Railway Co. for year 1900:

Total Gross Earnings.

Passenger receipts ..... (Increase $343,648.67.)	$5,506,313.67
Receipts from other sources..... (Increase $5,092.11.)	36,866.51
(Increase $348,740.79.)	$6,543,180.18

Total Expenses.

Operating Expenses, Taxes, Reserves for Re-Placements and Renewals and Damages..... (Increase $329,324.37.)	$3,655,001.64
Interest on Bonded Indebtedness.....	207,877.50
Total	$3,862,879.14
160 Net Income..... (Increase $19,416.41.)	$1,680,301.04
Dividends paid — 12%..... (Increase $75,003.00.)	$1,575,000.00
Surplus for the year..... (Decrease $55,586.59.)	106,301.04

Percentage of Net Income to Capital Stock.

On $13,125,000 in 1900 ($13,000,000 for nine months of 1900 and $13,500,000 for three months of 1900)..	12.80%
On $12,500,000 average in 1899.....	13.28%

Table of Percentages—Expenses to Receipts.

Percentage of Operating Expenses, Taxes and Reserves to Total Gross Earnings..... (Increase 1.92%.)	65.94%
Percentage of Operating Expenses, Taxes and Reserves to Passenger Receipts..... (Increase 1.96%.)	66.38%
Passenger Receipts per day..... (Increase $941.50.)	$15,085.79

Counsel for petitioners offers in evidence document marked Exhibit "12."

(Obj. to by respondents as incompetent, immaterial and irrelevant; overruled; respondents except.)

161 Exhibit "12" is a statement of the number of transfers of stock of Chicago City Ry. Co. made upon each and every day during the months of March and April, 1900, as appear by the record of said transfers, viz:

1900. March 2, 2 shares; March 8, 32 shares; March 10, 5 shares; March 15, 74 shares; March 21, 2 shares; March 23, 19 shares; March 31, 46 shares; April 4, 88 shares; April 5, 5 shares; April 14, 26 shares; April 26, 62 shares; April 27, 29 shares; April 28, 407 shares; April 30, 30 shares. Total number of shares transferred, 887 shares.

(Witness continues:) The rate of interest on the bonds is 4½ per cent. per annum. That interest is paid regularly by my company without a default. I am not familiar with a publication called the Official Reporter of the Chicago Stock Exchange. I don't think I ever saw it. I am familiar with a publication called the Economist.

Q. What is that publication?

(Obj. to by respondent as incompetent, immaterial and irrelevant; overruled; respondents except.)

A. It is a financial paper of the City pertaining to real estate, stock and general business. I don't know as to its circulation.

(Counsel for respondents move to exclude the testimony of the witness on the ground that it is incompetent, immaterial and irrelevant, and so moves as to each and every part of this
162 testimony severally. Motion overruled; respondents except.)

(Counsel for respondents also move to exclude the document known as Exhibit "10," also Exhibits "11 and 12," and all of the testimony given by Mr. Hamilton with reference to the net income, rate of dividends, the bonded debt and interest and other mathematical statements made by him. Motion overruled; respondents except.)

163 From the "Economist" of date March 31, 1900, which on the face purports to be "A Weekly Financial, Commercial and Real Estate Newspaper," published at Chicago, by the Economist Publishing Company.

Latest Bid and Asked Prices.

Stocks.	Amount cap. stock.	Bid.	Asked.
Chicago North Shore St. Ry. Co.....	$650,000	.....	96
Chicago City Railway.....	13,000,000	.....	270
Chicago Passenger Railway.....	2,000,000	.....	110
Chicago Telephone Co.....	5,000,000	225	
North Chicago City Railway.....	500,000		
North Chicago Street Railroad Co.....	7,920,000	221	224
West Division City Railway	1,250,000	750	
West Chicago Street Railroad.....	13,189,000	111	111¼

Unlisted Stocks.

Chicago Consolidated Traction.....	.....		
Chicago Edsion Co.....	.....	150	155
Chicago Union Traction.....	.....	22¼	23
Chicago Union Traction, pfd.....	.....	.....	74

Bonds.

		Amount.	Bid.	Asked.
Chicago City Ry. 5-20 4½s.....	1901	4,619,500	100	
Chicago Dock Co. 1st M. 4s.....	1929	700,000	.....	100
Chicago Gas Light & Coke Co. 5s.....	1937	10,000,000	168	
164				
Chicago Passenger Ry. Co. 6s.....	1903	400,000		
Chicago Passenger Ry. Cons 5s.....	1936	*2,000,000	105	106
Cicero & Proviso Cons. 5s.....	1915	1,078,000	103½	105½
Consumers' Gas 1st M. 5s.....	1936	4,346,000	105	107½
Equitable Gas 1st M. 6s...	1905	2,000,000	106	107½
Hyde Park Gas Co. 6s.....	1904	200,000		
N. Chicago City Ry. 1st M. 6s.....	1900	500,000	100	
N. Chicago City Ry. 4½s.....	1927	2,500,000	107	
N. Chicago St. R. R. 1st M. 5s.....	1906	1,500,000	104½	
N. Chicago St. R. R. 1st M. 5s.....	1909	1,250,000	106½	
N. Chicago St. R. R. 1st M. 5s.....	1916	421,000	.....	112
Ogden St. Ry. 6s.....	1916	*1,500,000	109½	110
People's Gas Cons. 6 per cent.....	1943	4,900,000		
People's Gas Rfdg. Gold 5s.....	1947	2,500,000	108	
South Chicago City Ry. Co. 5s.....	1913	*5,000,000		
W. Chicago St. R. R. 1st M. 5s.....	1928	4,100,000	109½	112
W. Chicago St. R. R. Tun. Co. 5s.....	1909	1,500,000	100½	
W. Chicago St. R. R. Deb. 6s.....	1914	767,000	100	101½
West Chicago St. R. R. Cons. 5s.....	1936	*12,500,000	103	103½

Unlisted Bonds.

Chi. Edison Co. Deb. 6s.....	1913	1,483,000	100½	
Chi. Edison Co. 1st M. Gold 5s	1926	2,975,000	.....	110½
Chi. North Shore St. Ry. Co. 6s.....	1912	675,000		
West Division City Ry. 4½s.....	1932	4,040,000	109	

* Amount authorized.

165 From the "Economist" of April 7, 1900.

Latest Bid and Asked Prices.

Stocks.	Amount cap. stock.	Bid.	Asked.
Cal. & C. Can. & Dock Co.	3,500,700	.....	69½
Central Union Telephone Co.	6,605,300	.....	46
Chicago North Shore St. Ry. Co.	650,000	.....	96
Chicago City Railway	13,000,000	.....	270
Chicago Passenger Railway	2,000,000	.....	110
North Chicago City Railway	500,000		
North Chicago Street Railroad Co.	7,920,000	220	224
South Side Elevated Railroad Co.	10,323,800	99	99½
Street's W. Stable Car Line	3,834,800	20	21
Street's W. Stable Car Line, pfd.	776,900	.....	72½
Union Elevated R. R.	5,000,000	92	96
West Division City Railway	1,250,000	750	
West Chicago Street Railroad	13,189,000	110½	111
Western Stone Co.	2,250,000	25	30

Unlisted Stocks.

Chicago Consolidated Traction	.....		
Chicago Edison Co.	....	149½	152
Chicago Union Traction	.....	25	25½
Chicago Union Traction, pfd.	.....	73½	75

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Bonds.		Amount.	Bid.	Asked.
Chicago City Ry. 5–20 4½s	1901	$4,619,500	100½	
Chicago Dock Co. 1st M. 4s	1929	700,000	.....	100
Chicago Gas Light & Coke Co. 5s	1937	10,000,000	107½	
Chicago Junc. Ry. & U. S. Yds. 5s	1915	10,000,000	.....	114
Chicago Passenger Ry. Co. 6s	1903	400,000	.....	
Chicago Passenger Ry. Cons. 5s	1936	*2,000,000	105	105½
Cicero & Proviso Cons. 5s	1915	1,078,000	103½	105½
Consumers' Gas 1st M. 5s	1936	4,346,000	106½	
Equitable Gas Co. 6s	1905	2,000,000	106	107½
Hyde Park Gas Co. 6s	1904	200,000		
Knickerbocker Ice 5s	1928	2,500,000	87	92
Lake Gas Co. 6s.	1915	300,000	100	
Lake St. Elevated R. R. 5s	1928	881,000		
Lake St. Elevated R. R. Deb. 5s	1928	4,015,200	.....	89½
Lake St. El. R. R. Income 5s	1928	1,003,800	26	30
Met. W. S. Elevated R. R. Gold 4s	1938	10,000,000	96½	97
N. Chicago City Ry. 1st M. 6s	1900	500,000	100	
N. Chicago City Ry. 4½s	1927	2,500,000	107	
N. Chicago St. R. R. 1st M. 5s	1906	1,500,000	104½	
N. Chicago St. R. R. 1st M. 5s	1909	1,250,000	106½	

*Amount authorized.

N. Chicago St. R. R. 1st M. 5s	1916	421,000	.....	112
Ogden St. Ry. 6s	1916	*1,500,000	109½	110
People's Gas Cons. 6 per cent	1943	4,900,000		
People's Gas Rfdg. Gold 5s	1947	2,500,000	108	
South Chicago City Ry. Co. 5s.	1913	*5,000,000		
167 Union Loop 5s	1945	4,212,000	108½	110
W. Chicago St. R. R. 1st M. 5s.	1928	4,100,000	109½	112
W. Chicago St. R. R. Tun. Co. 5s	1909	1,500,000	100½	
W. Chicago St. R. R. Deb. 6s	1914	767,000	100	101¼
West Chicago St. R. R. Cons. 5s	1936	*12,500,000	103¼	
Western Stone Co. 5-20 5s	1910	416,000	95	

Unlisted Bonds.

Chi. Edison Co. Deb. 6s	1913	1,483,000	100½	
Chi. Edison Co. 1st M. Gold 5s	1926	2,575,000	.....	110⅛
Chi. North Shore St. Rt. Co. 6s.	1912	675,000		
Northwestern Elevated 5s	1940	5,000,000	99¼	
South Side Elevated 4½s	1907	750,000	.....	105
West Division City Ry. 4½s	1932	4,040,000	107	

168 Chicago City Railway Company.

Liabilities.

Capital Stock.

Authorized ..... $14,000,000. Outstanding $13,000,000

Bonds.

First mortgage 4½ per cent, due July 1, 1901, interest January and July; trustee, Charles L. Hutchinson. 4,619,500

$17,619,500

Dividends: At the rate of 12 per cent. a year, quarterly, March 31.
The capital stock was issued as follows:—

Date.	Amount.	Consideration.	Date.	Amount.	Consideration.
1859	$250,000	Par in cash	January, 1889.	1,000,000	Par in cash.
1860	25,000	Par in cash	October, 1889.	1,000,000	Par in cash.
1860	20,000	Par in cash	January, 1891.	1,000,000	Par in cash.
1864	305,000	Par in cash	October, 1891.	1,000,000	Par in cash.
1865	100,000	Par in cash	April, 1893.	2,000,000	Par in cash.
1866	300,000	Par in cash	July, 1895.	1,000,000	Par in cash.
1870	250,000	Dividends	July, 1896.	1,000,000	Par in cash.
1876	250,000	Par in cash	October, 1896.	1,000,000	Par in cash.
1882	1,000,000	Par in cash	July, 1899.	1,000,000	Par in cash.
1883	500,000	Par in cash			
				$13,000,000	

*Amount authorized.

The directors are authorized, by resolution of stockholders
169 in January, 1899, to issue another $1,000,000 of stock to be offered to old holders at par at the directors' discretion.

Mortgage. The first mortgage, dated December 21, 1887, secured an immediate issue of $4,000,000 of bonds and provided that additional bonds to the amount of $2,000,000 might be issued from time to time for extensions and improvements, the additional bonds to bear such rate of interest as is fixed at time of issue. Principal and interest are payable at the First National Bank, Chicago, and in case of death or inability of trustee, Erskine M. Phelps is named as his successor. Bonds may be redeemed at any time on giving 60 days' notice.

History. In 1856 R. B. Mason and C. B. Phillips obtained an ordinance permitting the laying of street car tracks in State and Dearborn Streets. Only a little work was done, and in 1858 Frank Parmelee, Liberty Bigelow and Henry Fuller obtained a more extensive privilege from the city and a special charter from the state Legislature creating the Chicago City Railway Company. In 1882 the State Street line was changed from horse-power to cable. In 1890 the Company took over the incomplete Chicago & South Side Rapid Transit project, furnishing money to build the elevated road in Sixty-third Street and to complete construction north of that point. It thus secured a majority of the capital stock of the elevated road, and $3,000,000 second section bonds. The stock was
170 held in trust by the Chicago Trading Company, and in September, 1893, the stock and bonds were distributed among City Railway stockholders as an extra dividend, each holder getting 50 per cent. of the amount of his City Railway stock in Rapid Transit stock, and 33⅓ per cent. in extension bonds. In February, 1898, leading men in the company incorporated the Chicago City Railway Rapid Transit Company, with a capital of $1,000,000, for the purpose of building an elevated road in Dearborn Street from the heart of the city to Thirty-ninth street, to be used as a trunk line in bringing in the City Railway Company's trolley cars. Nothing has been done further in that direction, however. In June, 1898, the franchise of the General Electric Railway, which had threatened to invade the South Side territory, were acquired by interests friendly to the City Railway.

Directors. Samuel W. Allerton, Arthur Orr, Joseph Leiter, D. G. Hamilton, George T. Smith, William B. Walker, Otto Young.

Officers. President, D. G. Hamilton; first vice-president, Joseph Leiter; second vice-president, William B. Walker; treasurer, T. C. Pennington; Secretary, F. R. Greene; general manager, Robert McCulloch; auditor, C. N. Duffy.

Stock Transfer Office. 2020 State Street.

Registrar of Stock. Northern Trust Company.

Annual Meeting. First week day following January 14.

171 (Rules of State Board of Equalization, pp. 186 to 18-.)

Whereas, The fourth clause of section three of "An Act for the assessment of property, and for the levy and collection of

taxes," approved March 30, 1872, in force July 1, 1872,—provides as follows:—

3. Fourth. The capital stock of all companies and associations now or hereafter created under the laws of this state, shall be so valued by the State Board of Equalization as to ascertain and determine, respectively, the fair cash value of such capital stock, including the franchise, over and above the assessed value of the tangible property of such company or association. Said board shall adopt such rules and principles for ascertaining the fair cash value of such capital stock as to it may seem equitable and just; and such rules and principles when so adopted, if not inconsistent with this act, shall be as binding, and of the same effect as if contained in this act, subject, however, to such change, alteration or amendments as may be found from time to time to be necessary by said board: Provided, that in all cases where the tangible property or capital stock of any company or association is assessed under this act, the shares of capital stock of any such company or association shall not be assessed or taxed in this clause shall not apply to the capital stock or shares of capital stock or banks organized under the general banking laws of this state, therefore, be it

172 Resolved, That for the purpose of ascertaining the fair cash value of the capital stock, including the franchise, of all companies and associations now or hereafter created under the laws of this state, and for the assessment of the same, or so much thereof as may be found to be in excess of the assessed or equalized value of the tangible property of such companies and associations respectively, we, the State Board of Equalization, hereby adopt the following rules and principles, viz:—

First. The market or fair cash value of the shares of capital stock and the market or fair cash value of the debt (excluding from such debt the indebtedness for current expenses), shall be combined or added together; and the aggregate amount so ascertained shall be taken and held to be the fair cash value of the capital stock, including the franchise, respectively, of such companies and associations.

Second. From the aggregate amount so ascertained as aforesaid, there shall be deducted the aggregate amount of the equalized or assessed valuation of all the tangible property, respectively, of such companies and associations (such equalized or assessed valuation being taken in each case, as the same may be determined by the equalization or assessment of property by this board), and the amount

173 remaining, in each case, if any shall be taken and held to be the amount and fair cash value of the capital stock, including the franchise, which this board is required by law to assess, respectively, against companies and associations, now or hereafter created under the laws of this state.

Resolved, That for the purpose of ascertaining the fair cash value of the capital stock, including the franchise of all companies or associations now or hereafter created under the laws of this state, and for the assessment of the same, or so much thereof as may be found to be in excess of the assessed or equalized value of the tangible property of such companies and associations, respectively, we, the

State Board of Equalization, hereby adopt the following rules and principles, viz:—

First. The market or fair cash value of the shares of capital stock, and the market or fair cash value of the debt, to be determined by reference to the Stock Exchange or the books of said corporations, and the returns made to the State Board, or other means (excluding from such debt the indebtedness for current expenses), shall be combined or added together, and the aggregate amount so ascertained, shall be taken and held to be the fair cash value of the capital stock, including the franchise, respectively, of such companies and associations.

Second. From the aggregate amount ascertained as aforesaid, there shall be deducted the aggregate amount of the equalized or
174 assessed valuation of all tangible property respectively, of such companies and associations (such equalized or assessed valuation being taken, in each case, if any, shall be taken and held to be the amount and fair cash value of the capital stock, including the franchise, which this board is required by law to assess, respectively, against companies and associations now or hereafter created under the laws of this state.

Resolved, That for the purpose of ascertaining the fair cash value of the capital stock, including the franchise, of all companies and associations now or hereafter created under the laws of this state, and for the assessment of the same, or so much thereof as may be found to be in excess of the assessed or equalized value of the tangible property of such companies and associations, respectively, we, the State Board of Equalization, hereby adopt the following rules and principles, viz:—

First. The capital stock of each said company or association shall be valued as an entirety, due consideration being given to the following propositions:

a. To the character and duration of the franchise of said company, or association.

b. To the amount of the contribution (if any) demanded of and paid by said company or association under the provisions of any contract or ordinance, to any municipality, as compensation for the use of its franchise privileges in said municipality.

175 *c.* The highest and the lowest quotations of the shares of stock of said company, or association during the twelve months immediately preceding the date of assessment and the number of shares of stock sold at such quotations.

d. Any other fact or condition or circumstance that will assist in arriving at a just, equitable, fair cash value of said capital stock.

Second. From the aggregate amount ascertained as aforesaid, there shall be deducted the aggregate amount of the equalized or assessed valuation of all the tangible property, respectively, of such companies and associations, wherever the same may be located (such equalized or assessed valuation of its Illinois property, being taken in each case, as the same may be determined by the equalization or assessment of property by this board), and the amount remaining in each case, if any, shall be taken and held to be the amount and

fair cash value of the capital stock, including the franchise, which this board is required by law to assess, respectively, against companies and associations now or hereafter created under the laws of this state.

Third. The above and foregoing are declared to be the only existing rules and principles adopted by this board for its government in the assessment of the capital stock of companies or associations. The yeas and nays being called for, those voting in the affirmative
176 were Messrs. Barnes, Cadwallader, Cruttenden, Hirsheimer, Leavitt, Long, Martin, McAnsh, McKenna, McKnight, Pierce, Robeson, Rogers, Simon, Severin, Taylor, Wall and Works—18 votes. There being no negative votes, the resolution was declared carried.

177 Deposition of A. W. MILLER, called as a witness on behalf of petitioners:

I am a member of the Board of Cook County Assessors. I have been a member of the Board of Cook County Assessors two years and three months. I have seen the printed sheet of the companies mentioned in the petition in this case. My attention was first called to one of these sheets about the 1st of June last year. To the best of my knowledge none of these corporations filed any capital stock schedules with us. That is during the year 1900. All corporations that did not file schedules with our board of assessors, the board made schedules for them, and all schedules were turned over to the county clerk. I mean the return or statement of capital stock for purpose of capital stock taxation. Returns that we made out, were made out, as far as I can remember, for all of the companies on that list, to the best of my knowledge.

Deposition of PHILIP KNOPF, called as a witness on behalf of petitioner:

I am County Clerk of Cook County; have been County Clerk of Cook County about six years and a half. With reference to the capital stock returns or statements and schedules concerning
178 the twenty-three corporations on the printed list that is being used in this case I sent them to the State Board of Equalization at Springfield, that is all, when they were filed in my office. I have not seen this printed list that is on the table. (List read to witness.) The schedules for them may have been all made, and not any. There are several hundred filed in the office. I don't remember what they were. My office received certain statement- with reference to capital stock from the Board of Assessors, and as to all of those statements and the schedules received by me from the Board of Assessors, I sent them to Springfield. Not only from the Board of Assessors, but from the individual corporations, too, you know; I got some from the corporations outside of the Board of Assessors. I send them to State Board of Equalization. I think sent to the Auditor. I think he is chairman of the board, *ex-officio* chairman, I think, I ain't sure about that.

Cross-examination:

I received back from the Auditor of Public Accounts of the State certified results of the assessments of corporations made by the State Board of Equalization for the year 1900. And also results of the equalization of assessments made by local assessors. I received
179 these as County Clerk of Cook County; that is the way we spread the taxes. The assessment made by the State Board of Equalization of the corporations in Cook County assessed by them and all assessments of property in Cook County.

Mr. GREENACRE: You are making him your witness, you intend to have it that way?

Mr. MILLER: You can save an objection if you want to.

(Objected to as not cross-examination.)

And when I got these certificates of statements of the assessment by the State Board of Equalization and also of the results of the equalization or assessments from the Auditor of Public Accounts, I extended the taxes for the year 1900. And I made the warrants and the books for the collection and delivered them to the collectors as required by law for the taxes 1900.

180 W. H. EUBANKS, called for relators, testified:

I am employed in the auditor's office as chief clerk I was secretary of the last State Board of Equalization. I believe I was first elected in 1892, I am not positive about that, I think it was in 1892, and I have been elected and served with every board since that time up to the present.

(Paper handed reporter and marked Exhibit "27," also paper marked Exhibit "28" and paper marked Exhibit "29," also paper marked Exhibit "30.")

Exhibit "27" is a list filed by the clerk of Cook County in the auditor's office; it purports to be a list or schedule of capital stock made up by the Board of Assessors; I take it to be that under the heading on it, and the signatures and designated, I am not positive, but I think it came down with a bunch of returns, that is my recollection of it now. That was filed on the 8th of October, 1900, I think that was the date; no, the 17th of October. There was no papers sent with these, I don't think, except the schedules of capital stock sent by the assessors of the various companies listed here.

Paper marked Exhibit "28" are copies of statements of corporations made up by the Board of Assessors of Cook County, I don't know who they were made by. Only by the signature, that is all.
I simply know what they show on their face. The originals
181 are in the auditor's office. The originals were received by mail from the County clerk's office of Cook County, I say by mail or express.

For the year 1900 I did not receive any other statements or schedules from the county clerk of Cook County for the purpose of taxa-

tion than the originals of which these Exhibits "27" and "28" are copies, not to my recollection; no papers pertaining to capital stock.

Exhibit "27" offered in evidence by relators.

(Objected to by respondents as incompetent, immaterial and irrelevant; objection overruled; respondents except.)

Said Exhibit "27" is merely a numbered list purporting to contain the names of 355 companies, corporations or firms, and opposite to the name, in most cases, is a street number.

182 Also, similar statement as to Chicago City Railway Company:—

The amount of capital stock authorized, $14,000,000; number of shares into which said capital stock is divided, 140,000. The amount of capital stock paid up, $13,000,000; number of shares actually issued, 130,000. Market value of the shares of stock, $260; if no market value, then the actual value, $—.

The total amount of all indebtedness, except the indebtedness for current expenses, excluding from such expenses the amount paid for the purchase or improvement of property.

Assessors. The assessed valuation of lands, $—; of lots, $1,000,000 to $1,500,000; personal property, $5,000,000.

183 Also statement by Chicago City Railway Company showing:—

Amount of capital stock authorized $13,000,000; number of shares into which said capital stock is divided 130,000. The amount of capital stock paid up $13,000,000; No. of shares actually issued 130,000. Market value of the shares of stock, if no market value, then the actual value, see below. The total amount of all indebtedness, except the indebtedness for current expenses, excluding from such amount expenses the amount paid for the purchase of improvement of property $4,619,000.

The assessed valuation of lands, lots, full value $1,102,270; personal property $4,000,000. Total assessed valuation of all tangible property of said company $5,102,270. Market value of the shares of stock; if no market value, then the actual value.

The market value of this stock fluctuates from day to day, and, therefore, it has no fixed market value. Its actual value is represented by the company's capital now invested in tangible property, as assessed by the local assessors, plus its franchise, subject to the limitation by ordinances of the City of Chicago of which right its franchise is without value.

Subscribed and sworn to November 10, 1900, by L. F. Minzesheimer, attorney for Chicago City Railway Company.

184 *Statement by Chicago City Railway Company of Capital Stock, etc., as Required by Sec. 32 for 1899.*

Name of company or association, Chicago City Railway Company.
Location of company or association, Chicago, Ill.

	Amount.
Amount of capital stock authorized	$12,000,000
No. of shares into which said capital stock is divided, 120,000	
Amount of capital stock paid up	12,000,000
No. of shares actually issued, 120,000	
Market value of the shares of stock	
If no market value, then the actual value	

The total amount of all indebtedness, except the indebtedness for current expenses, excluding from such expenses the amount paid for the purchase or improvement of property:

The assessed valuation of,

Lands	$
Lots, 1/5 total value	348,304
Personal property, 1/5 total value	1,400,000
Total assessed valuation of all tangible property of said company	$1,746,304

185 EXHIBIT "67."

Office of Chicago City Railway Co., F. R. Greene, Secretary, 2020 State St.

CHICAGO, *Aug.* 24, 1898.

For 1897.

Amount paid for improvement of streets	$180,410.49
Amount paid for care licenses	21,525.21
Amount paid for sub-wages (to City)	23,076.92
Amount paid for lighting streets	10,000.00
Total	$253,012.62

Statement by Chicago City Railway Co. of Capital Stock, etc., as Required by Sec. 32, for 1898.

Name of company or association, Chicago City Railway Co. Location of company or association, Chicago, Illinois.

Amount of capital stock authorized	$12,000,000.
No. of shares into which said capital stock is divided	120,000.
The amount of capital stock paid up	
No. of shares actually issued	120,000.
Market value of the shares of stock	
If of no market value, then the actual value	

The total amount of all indebtedness, except the indebtedness for current expenses, excluding from such expenses the amount paid for the purchase or improvement of property.

186 The Assessed Valuation of:

Lands	
Lots	194,075.00
Personal property	380,000.00
Total assessed valuation of all tangible property of said company	574,075.00

Adjourned to 2.00 p. m., Tuesday, May 3, 1904.

2.00 p. m. Tuesday, May 3, 1904.
Adjourned to 2.00 p. m., Tuesday, May 10, 1904.

2.00 p. m., Tuesday, May 10, 1904.
Adjourned to 2.00 p. m., Tuesday, May 17, 1904.

* * * * * * *

(Endorsed:) Filed Nov. 19, 1904, Marshall E. Sampsell, Clerk.

187 NORTHERN DISTRICT OF ILLINOIS, *Eastern Division, ss:*

I, Marshall E. Sampsell, Clerk of the Circuit Court of the United States for the Northern District of Illinois, do hereby certify the above and foregoing consisting of 39 type-written pages to be a true and correct copy of pages 383 to 420, both inclusive of a certain Master's Report filed in said court on the 19th day of November, 1904, in the cause entitled Chicago City Railway Company *vs.* Samuel R. Raymond, *et al.*, General Number 26,165, as the same will appear from the original Report now remaining in my custody and control.

In Testimony Whereof, I have hereunto set my hand and affixed

the seal of said Court at my office, in the City of Chicago, in said District, this 27th day of September, 1906.

[Seal Circuit Court U. S., Northern Dist. Illinois, 1855.]

MARSHALL E. SAMPSELL, *Clerk.*

188 And on to-wit: the twenty-sixth day of September, 1906, there was filed in the clerk's office of said Court in said entitled cause a certain Stipulation in words and figures following to-wit:

Stipulation.

In the Circuit Court of the United States, Northern District of Illinois, Eastern Division Thereof.

In Chancery. No. 26165.

CHICAGO CITY RAILWAY COMPANY, Complainant,
vs.
SAMUEL B. RAYMOND, County Collector, ET AL., Defendants.

It is hereby stipulated between Samuel B. Raymond, County Collector, *et al.*, appellants, and Chicago City Railway Company, appellee, that a complete transcript of the record in the case of the Chicago Union Traction Company *vs.* Samuel B. Raymond, County Collector *et al.*, No. 26609, in the Circuit Court of the United States for the Northern District of Illinois, as per præcipe now on file with the Clerk of said Court, shall be filed in the Supreme Court of the United States by counsel for appellants.

And it is further stipulated that the Clerk of said Circuit Court may prepare and transmit to the Clerk of the Supreme Court of the United States at Washington, D. C., the following pleadings, proceedings and papers, which are different in this cause
189 & 190 from the corresponding pleadings, proceedings and papers in said cause of the Chicago Union Traction Company *vs.* Samuel B. Raymond *et al.*, No. 26609:

1st. Bill of complaint, filed February 13th, 1902;

2nd. Answer of the defendants, filed June 28th, 1902;

3rd. Master's report, filed June 9th, 1902, together with the depositions of all witnesses filed on said 9th day of June, 1902, and attached to said Master's report, together with all exhibits accompanying the same;

4th. Answer of City of Chicago, filed May 19th, 1906;

5th. Final decree, entered July 25, 1906;

6th. Order entered August 10th, 1906, correcting final decree as of July 25th, 1906;

7th. Petition for appeal and assignment of errors of defendants, filed August 10th, 1906;

8th. Appeal bond of defendants, filed September 5th, 1906;

9th. Testimony taken before the Master, which relates specially

to the Chicago City Railway Company, including pages 383 to 420, both inclusive, of said testimony.

And, inasmuch as many of the papers, pleadings, proceedings and orders in this cause are identical with the corresponding papers, pleadings, proceedings and orders in said cause of the Chicago Union Traction Company *vs.* Samuel B. Raymond *et al.*

191 Now, it is hereby further agreed that for the purpose of considering this appeal, the Transcript of the Record in this cause to be used in the Supreme Court of the United States shall consist of the papers, pleadings, proceedings and orders contained in the Transcript of the Record filed in the said cause of the Chicago Union Traction Company *vs.* Samuel B. Raymond, *et al.*, in the Supreme Court of the United States, which it is hereby agreed is identical with the corresponding pleadings, papers, proceedings and orders had in this cause, except in so far as the transcript in this cause has been made up by filing a transcript of the papers, records, proceedings and orders above specifically enumerated. Provided, however, that either party hereto may at any time take up to said Supreme Court by supplemental Transcript of Record, any and all other papers, pleadings, proceedings or orders had in this cause in the said Circuit Court and not above specifically enumerated.

And it is further stipulated that the printed Transcript of the record in this cause may be made up as follows: the pleadings, proceedings and papers in this cause shall be printed in their order, except where such pleadings, proceedings or papers consist of the record filed of the said cause of the Chicago Union Traction Company *vs.* Samuel B. Raymond *et al.*, when, instead of printing the said record in said last mentioned cause in full in the places where the same belongs, reference shall be made to the page in the

192 printed transcript of the record in said cause of the Chicago Union Traction Company *vs.* Samuel B. Raymond *et al.*, on which is printed said corresponding pleading, proceeding or paper, and a complete printed transcript of the record in said cause of the Chicago Union Traction Company *vs.* Samuel B. Raymond *et al.* shall be attached to and bound in with said printed Transcript of the Record in this cause.

CHICAGO CITY RAILWAY COMPANY,
By JOHN P. WILSON,
Its Solicitor.

CITY OF CHICAGO, SAMUEL B. RAYMOND, COUNTY COLLECTOR, AND ALL OTHER DEFENDANTS,
By HARRY A. LEWIS,
WM. F. STRUCKMANN,
JAMES HAMILTON LEWIS AND
DAVID K. TONE,
Their Solicitors.

(Endorsed:) Filed Sept. 26, 1906. Marshall E. Sampsell, Clerk.

193 And on to-wit: the twenty-sixth day of September, 1906, there was filed in the clerk's office of said Court in said entitled cause a certain Stipulation extending time to file transcript of record in Supreme Court. Said Stipulation is in words and figures following to-wit:

Stipulation Extending Time to File Transcript of Record.

In the Circuit Court of the United States, Northern District of Illinois, Eastern Division.

No. 26165.

CHICAGO CITY RAILWAY COMPANY, Complainant,
vs.
SAMUEL B. RAYMOND ET AL., Defendants.

It is hereby stipulated between the parties to the above entitled cause, by their respective counsel, that the defendants and appellants' time for filing a transcript of record in the above entitled cause, in the Supreme Court of the United States, be extended for twenty (20) days, that is, up to and including the 29th day of September, 1906.

WILSON, MOORE & McILVAINE,
Counsel for Complainant.
HARRY A. LEWIS,
WM. F. STRUCKMANN,
JAMES HAMILTON LEWIS, AND
DAVID K. TONE,
Counsel for Defendants.

(Endorsed:) Filed Sept. 26, 1906, Marshall E. Sampsell, Clerk.

194 NORTHERN DISTRICT OF ILLINOIS, *Eastern Division, ss:*

I, Marshall E. Sampsell, Clerk of the Circuit Court of the United States for the Northern District of Illinois, do hereby certify the above and foregoing to be a true and complete transcript of the proceedings had of record in said court, made in accordance with Stipulation filed in the cause entitled Chicago City Railway Company *vs.* Samuel B. Raymond, County Treasurer, Cook County, Illinois, and *ex-officio* County Collector, of Cook County, Illinois, and John J. Hanberg, his successor in office as County Treasurer of Cook County, Illinois, and *ex-officio* County Collector of Cook County, Illinois, and *ex-officio* Town Collector of the Town of South Chicago and Maurice Fitzgerald, Town Collector of the Town of South Chicago and The City of Chicago, as the same appear from the original records and files of said Court now remaining in my custody and control.

In testimony whereof, I have hereunto set my hand and affixed the seal of said Court at my office in the City of Chicago, in said District, this 27th day of September, A. D. 1906.

[Seal Circuit Court U. S., Northern Dist. Illinois, 1855.]

MARSHALL E. SAMPSELL, *Clerk.*

Endorsed on cover: File No. 20,391. N. Illinois C. C. U. S. Term No. 426. Samuel B. Raymond, county treasurer of Cook county, Illinois, and *ex officio* county collector of Cook county, Illinois; John J. Hanberg, his successor as such county treasurer and county collector, *et al.*, appellants, *vs.* Chicago City Railway Company. Filed October 2d, 1906. File No. 20,391.

COPY BOUND CLOSE IN CENTER

IN THE

SUPREME COURT OF THE UNITED STATES,

OCTOBER TERM, A. D. 1906.

Samuel B. Raymond, County Treasurer of Cook County, Illinois, *et al.*, *Appellants*, *vs.* Chicago City Railway Company, *Appellee.* } No. 426.

NOTICE OF MOTION TO ADVANCE AND SET DOWN FOR HEARING.

To:

JOHN P. WILSON,
Solicitor for Chicago City Railway Company.

Please take notice that on Monday, the 10th day of December, 1906, we shall appear before the Supreme Court of the United States in the City of Washington, D. C., at the opening of court on said day, or as soon thereafter as counsel can be heard, and move that the above entitled cause be taken up out of its order upon the docket of said court and advanced and set down for hearing upon some particular day of this term of said court, to be fixed by said court.

A copy of said motion, embodying the reasons in

support thereof, together with a printed copy of the final decree entered in said cause is herewith handed you, which will be filed with the clerk of said court.

HARRY A. LEWIS,
WILLIAM F. STRUCKMANN,
JAMES HAMILTON LEWIS, and
DAVID K. TONE,
Solicitors for Appellants.

Received a copy of the above notice and of said motion and final decree this ..... day of December, A. D. 1906.

IN THE

SUPREME COURT OF THE UNITED STATES,

OCTOBER TERM, A. D. 1906.

Samuel B. Raymond, County Treasurer of Cook County, Illinois, *et al.*, *Appellants*,
vs.
Chicago City Railway Company, *Appellee.*
} No. 426.

MOTION TO ADVANCE AND SET DOWN FOR HEARING.

Now come Samuel B. Raymond, County Treasurer of Cook County, etc., and John J. Hanberg, his successor, etc., and The City of Chicago, appellants in the above entitled cause, and move the court that this cause be taken up out of its order upon the docket of this court and be advanced and set down for hearing on some particular day of this term, to be fixed by this court.

In support of said motion, the said appellants beg leave to submit the following reasons:

First: It appears from the final decree in this cause (Original Record, page 76½, a printed copy of which final decree is filed herewith, pages 1 to 4) that the Circuit Court, by said final decree, perpetually enjoined an assessment on the capital stock and franchises of the complainant, made by the State Board of Equalization of the State of Illinois,

and aggregating $5,001,300, and the taxes levied pursuant thereto, and it therefore appears that the proceeding in the court below was one which enjoined the revenue officers of the State of Illinois from collecting an assessment made under the authority of the laws of the State of Illinois.

Second: It appears from the final decree in this cause, above referred to, that a question of momentous importance to the People of the State of Illinois, and a constitutional question of great importance in reference to the jurisdiction of a federal court to enjoin state officials from enforcing the revenue laws of the state is involved in this appeal.

Third: It appears from the final decrees entered in each of the seven causes that were heard together in the court below (printed copies of which final decrees are filed in each of the said respective causes), that all of said causes involve the same questions, and that by the action of the Circuit Court in enjoining the collection of the capital stock assessments made against each of said corporations, respectively, about $2,000,000 of the taxes levied by the State Board of Equalization of the State of Illinois for the year 1901 was perpetually enjoined, and that by reason of the vast sum of money so enjoined, and by reason of the importance of securing a speedy determination of the validity of said assessments, this cause should be advanced and heard out of its regular order.

HARRY A. LEWIS,
WILLIAM F. STRUCKMANN,
JAMES HAMILTON LEWIS, and
DAVID K. TONE,
Solicitors for Appellants.

In the Circuit Court of the United States,
For the Northern District of Illinois,
Eastern Division.

Chicago City Railway Company *vs.* Maurice Fitzgerald, Town Collector of the Town of South Chicago, Samuel B. Raymond, County Treasurer, and City of Chicago.	In Equity. No. 26,165.

DECREE.

Record.

This cause came on to be further heard at this term, and was argued by counsel; and thereupon, 76½ upon consideration thereof, it is ordered that all objections and exceptions to the Master's reports be, and the same are hereby overruled, and that the Master's reports and each of them be, and they are hereby approved and confirmed; and the court finds that all the material allegations of the bill of complaint are sustained by the evidence, and that the equities of the case are with the complainant; and thereupon the court doth order, adjudge and decree as follows:

That the assessment made by the State Board of Equalization of the State of Illinois, at its session in 1901, against the complainant, the Chicago City Railway Company, upon its capital stock for the year 1900 (the net amount of said assessment being $5,001,300), was made under the coercive influence of a writ of mandamus issued by the Circuit Court of Sangamon County, in the State of

Illinois, and did not represent the real or independent judgment of the said State Board of Equalization, and that the assessments made by said State Board of Equalization, at its meeting held in 1901, upon the capital stock of the said complainant, and upon the capital stock of the other corporations named in the writ of mandamus above mentioned, for the year 1900, was in fact made upon a materially different basis from that upon which the capital stock of all other corporations of the same class was assessed by the said State Board of Equalization for the year 1900, and also upon a basis materially different from that upon which all other taxable property in the State of Illinois was assessed for the year 1900; that said assessment made in 1901 upon the capital stock of the complainant for the year 1900, was made under the coercive influence of said mandamus without the exercise or application of the judgment of the State Board of Equalization, or the members thereof, to the ascertainment of the value of said capital stock, and without the State Board of Equalization, either in fact or in form, taking into consideration the basis upon which all other taxable property in the State of Illinois was assessed and taxed for the year 1900, and without in fact or in form equalizing the valuation or assessment of the capital stock of said complainant for the year 1900 with all or any of the assessments made upon the other taxable property in the State of Illinois for the year 1900, with the result that the said assessment on the capital stock of complainant, made in the year 1901 for the year 1900, was made on a much higher basis than that upon which the other taxable property

of the State of Illinois was assessed and taxed for the year 1900; and that said assessment upon said capital stock for the year 1900 was and is unjust and inequitable: that the making of said assessment as aforesaid in 1901, upon the capital stock of the said complainant, and the extension of taxes thereon, and the attempt to enforce the payment of such taxes so extended, from complainant, was and is a violation of the Fourteenth Amendment to the Constitution of the United States, and that the attempt to enforce the collection from complainant of the taxes extended on said reassessment will, unless restrained, result in a multiplicity of suits, and in irreparable injury to the complainant.

An order was entered herein on the 28th day of June, 1902, as a condition precedent to the granting of the temporary relief prayed for in the bill of complaint herein, that complainant should pay, in addition to the tax already paid upon the first or original capital stock assessment for the year 1900, the further sum of $133,948.02, making a total capital stock tax to be paid by the complainant for the year 1900 of $192,517.02, which is found and decreed by the court to be all that complainant should equitably be required to pay as a capital stock tax for the year 1900. Said additional sum of $133,948.02 has been paid by complainant to the County Treasurer of Cook County, in compliance with said order, making the total amount paid by complainant, as taxes upon its capital stock for the year 1900, the said sum of $192,517.02.

It is therefore further ordered, adjudged and decreed that the said assessment of $5,001,300, on the capital stock of complainant, made by the State

Board of Equalization in the year 1901 for the year 1900, and all taxes levied and extended thereon, and now spread upon the books of the tax collecting agencies in the City of Chicago, County of Cook and State of Illinois, for collection, be and they are, and each of them is, illegal, null and void, and that the defendants, Maurice Fitzgerald, Town Collector of the Town of South Chicago, and his successor and successors in office, as such town collector, and the defendant, Samuel B. Raymond, County Treasurer of Cook County, Illinois, and *ex-officio* County Collector of said county, and his successor and successors in office, as such county treasurer and *ex-officio* county collector, and the defendant, the City of Chicago, and each of them, and each and every of their respective agents, deputies, servants, attorneys and representatives be, and they are, and each of them is, hereby perpetually enjoined and restrained from in any wise levying or collecting, or in any manner attempting, directly or indirectly, to levy or collect, or to enforce against the complainant, or against any of its property, said tax or taxes, or any or either of them, or any part thereof.

It is further ordered, adjudged and decreed that the costs of this cause be taxed against complainant.

P. S. Grosscup.

IN THE CIRCUIT COURT OF THE UNITED STATES,
NORTHERN DISTRICT OF ILLINOIS,
EASTERN DIVISION THEREOF.

Chicago City Railway Company, *Complainant,*
vs.
Samuel B. Raymond, County Collector *et al.*, *Defendants.*
In Chancery. No. 26,165.

IT IS HEREBY STIPULATED between Samuel B. Raymond, County Collector, *et al.*, appellants, and Chicago City Railway Company, appellee, that a complete transcript of the record in the case of the Chicago Union Traction Company *vs.* Samuel B. Raymond, County Collector, *et al.*, No. 26609, in the Circuit Court of the United States for the Northern District of Illinois, as per præcipe now on file with the clerk of said court, shall be filed in the Supreme Court of the United States by counsel for appellants.

AND IT IS FURTHER STIPULATED that the clerk of said Circuit Court may prepare and transmit to the clerk of the Supreme Court of the United States at Washington, D. C., the following pleadings, proceedings and papers which are different in this cause from the corresponding pleadings, proceedings and papers in said cause of the Chicago Union Traction Company *vs.* Samuel B. Raymond *et al.*, No. 26609:

1st. Bill of complaint, filed February 13, 1902;

2nd. Answer of the defendants, filed June 28, 1902;

3rd. Master's report, filed June 9, 1902, together with the depositions of all witnesses filed on said 9th day of June, 1902, and attached to said Master's re-

port, together with all exhibits accompanying the same;

4th. Answer of City of Chicago, filed May 19, 1906;

5th. Final decree, entered July 25, 1906;

6th. Order entered August 10, 1906, correcting final decree as of July 25, 1906;

7th. Petition for appeal and assignment of errors of defendants, filed August 10, 1906;

8th. Appeal bond of defendants, filed September 5, 1906;

9th. Testimony taken before the Master, which relates especially to the Chicago City Railway Company, including pages 383 to 420, both inclusive, of said testimony.

AND, inasmuch as many of the papers, pleadings, proceedings and orders in this cause are identical with the corresponding papers, pleadings, proceedings and orders in said cause of the Chicago Union Traction Company *vs.* Samuel B. Raymond *et al.*

NOW, IT IS HEREBY FURTHER AGREED that for the purpose of considering this appeal, the transcript of the record in this cause to be used in the Supreme Court of the United States shall consist of the papers, pleadings, proceedings and orders contained in the transcript of the record filed in the said cause of the Chicago Union Traction Company *vs.* Samuel B. Raymond *et al.*, in the Supreme Court of the United States, which it is hereby agreed is identical with the corresponding pleadings, papers, proceedings and orders had in this cause, except in so far as the transcript in this cause has been made up by filing a transcript of the papers, records, proceedings and orders above specifically enumerated. PRO-

VIDED, however, that either party hereto may at any time take up to said Supreme Court by supplemental transcript of record, any and all other papers, pleadings, proceedings or orders had in this cause in the said Circuit Court and not above specifically enumerated.

AND IT IS FURTHER STIPULATED that the printed transcript of the record in this cause may be made up as follows: the pleadings, proceedings and papers in this cause shall be printed in their order, except where such pleadings, proceedings or papers consist of the record filed of the said cause of the Chicago Union Traction Company *vs.* Samuel B. Raymond *et al.*, when, instead of printing the said record in said last mentioned cause in full in the places where the same belongs, reference shall be made to the page in the printed transcript of the record in said cause of the Chicago Union Traction Company *vs.* Samuel B. Raymond *et al.*, on which is printed said corresponding pleadings, proceeding or paper, and a complete printed transcript of the record in said cause of the Chicago Union Traction Company *vs.* Samuel B. Raymond *et al.* shall be attached to and bound in with said printed transcript of the record in this cause.

CHICAGO CITY RAILWAY COMPANY,
By JOHN P. WILSON,
Its Solicitor.

CITY OF CHICAGO, SAMUEL B. RAYMOND, COUNTY COLLECTOR, AND ALL OTHER DEFENDANTS,
By HARRY A. LEWIS,
WILLIAM F. STRUCKMANN,
JAMES HAMILTON LEWIS, and
DAVID K. TONE,
Their Solicitors.

IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1906.

No. 426

SAMUEL B. RAYMOND, County Treasurer of Cook County, Illinois, and *ex officio* County Collector of Cook County, Illinois; JOHN J. HANBERG, his Successor as such County Treasurer and County Collector et al.,

Appellants,

vs.

CHICAGO CITY RAILWAY COMPANY.

Appeal from the Circuit Court of the United States for the Northern District of Illinois.

APPELLANTS' BRIEF.

STATEMENT OF THE CASE.

On the 13th day of February, 1902, appellee filed its bill of complant (Trans., 1) against Samuel B. Raymond, County Treasurer of Cook County, Illinois, and ex-officio County Collector of said county, and Maurice Fitzgerald, Town Collector of the Town of South Chicago, in said county, seeking to enjoin said officials from enforcing against appellee a certain tax levied pursuant to an assessment made

upon the capital stock and franchises of appellee, by the State Board of Equalization of the State of Illinois on the the 22nd of November, 1901, as and for the first of April, 1900.

The appellee was a corporation engaged in operating steel railways, in the City of Chicago, on the first day of April, 1900.

The statutes of the State of Illinois provide that a County Board of Assessors, consisting of three persons, shall assess the tangible property of corporations doing business within the State of Illinois; and the Illinois law further provides that the capital stock and franchises of corporations pursuing the kind of business that appellee was engaged in shall be assessed by the State Board of Equalization. The members of the said State Board of Equalization in assessing the capital stock and franchises of corporations act as original assessors.

Said Board is also charged with the duty of equalizing the value of real and personal property between the several counties, after said values have been certified by the State Auditor to the county officers. All assessments made by said Board as original assessors, are certified to the county officials, and used as the basis of extending the taxes against the corporation so assessed, on the amount so certified.

Appellee was required, under the laws of the State of Illinois, to deliver to the county assessors, for the year 1900, a statement showing the market value, or if no market value then the actual value, of its shares of stock. This statement was to be forwarded to the State Board of Equalization and used by said Board in making an assessment of the capital stock and franchises of appellee. Appellee made out a statement, which was duly forwarded to the State

Board, but that statement (Trans., 92) contained no information in reference to either the market value or the actual value of appellee's shares of stock.

The Illinois law also provided that if the corporation failed to make out a statement, it should be the duty of the county assessors to make out a schedule getting the information called for from the best obtainable sources.

The State Board met for its annual session September 11, 1900, but took no steps towards assessing the capital stock and franchises of appellee. On November 10, 1900, the State's Attorney of Sangamon County filed a petition for a mandamus on the relation of certain taxpayers, in the Circuit Court of said county, against said State Board of Equalization, alleging that said Board wilfully neglected and refused, during the year 1899, to assess the capital stock and franchises of appellee, and numerous other corporations in said petition named, and that said Board claimed and pretended that it would, at its then session, also refuse to assess the capital stock and franchises of said corporations, or would assess the same at such a figure as to produce a mere nominal tax. Said petition set forth the market value of said stock and that the same was well known to said Board, and said petition prayed that a writ of mandamus might issue, directing said Board to make an assessment of the capital stock and franchises of appellee.

On December 3, 1900, said State Board of Equalization adjourned, and on that day said Board, for the purpose of defeating the prosecution of said mandamus suit, made a mere nominal assessment of the capital stock and franchises of appellee. Said assessment was certified to the County Clerk, and

the taxes extended pursuant thereto paid before said mandamus suit was tried.

During the month of April, 1901, said mandamus suit was tried in the Circuit Court, and on the first of May, 1901, a judgment was entered by that court awarding a writ of mandamus as prayed for in said petition.

An appeal was taken from said judgment by the State Board, and on the 24th day of October, 1901, the Supreme Court of Illinois handed down an opinion affirming said judgment. (*The State Board of Equalization* v. *People*, 191 Ill., 528.) The Supreme Court of Illinois held that the assessment of the capital stock and franchises of appellee made by the Board on December 3, 1900, was so grossly inadequate that it was for that reason fraudulent and void.

Thereafter the mandate of the Supreme Court was duly filed in the Circuit Court, and on the 2d day of November, 1901, there issued a writ of mandamus against the members of the State Board of Equalization, commanding them to assess the capital stock and franchises of the appellee and certain corporations therein named, and in obedience to said writ of mandamus, the said State Board of Equalization, on the 22d of November, 1901, made an assessment, amounting to the sum of $5,001,300, on the capital stock and franchises of appellee as and for the first day of April, 1900; the taxes amounting to the sum of $393,602.31 were duly extended by the County Clerk on said assessment, and this bill of complaint is filed to enjoin the collection of said taxes, and the enforcement of said assessment.

The various allegations of appellee's bill of complaint, stripped of unnecessary verbiage, amount to

this: That the Constitution and Laws of the State of Illinois require uniformity and equality in the assessment of all property within the state, and that the State Board of Equalization, in violation of those constitutional and statutory provisions, made an assessment upon the capital stock and franchises of appellee that was unequal, discriminating and unfair, and that the above result was brought about in the following manner:

First. The assessment of other property in the state, including that of railroad and telegraph companies and other corporations for the years 1900, as finally equalized by the State Board of Equalization, did not exceed 1/5 of 70 per cent of its cash value, whereas the capital stock and franchises of appellee and the other corporations that were made defendants to said mandamus suit were assessed at 1/5 of their full cash values.

Second. That the assessment of the capital stock and franchises of appellee and the other corporations above named was excessive, unreasonable and much higher than the assessments made upon the property of other persons and corporations for the same year.

Third. That the assessment of the capital stock and franchises of appellee, made by the State Board on December 3, 1900, and the payment in January, 1901, of the taxes extended pursuant to said assessment, constituted a full discharge by the appellee of all taxes that could be levied under the laws of the State of Illinois against its capital stock and franchises.

Fourth. That the members of the State Board of Equalization, in making the assessment complained of, did not exercise their own independent judgment, but believed that they were coerced by the writ of

mandamus of the Circuit Court, into making the assessment, for the amount and in the manner returned.

By reason of the foregoing proceedings, it was charged in the bill of complaint that the appellee was deprived of its property without due process of law, and denied the equal protection of the law, in violation of the 14th amendment.

A demurrer was filed to appellee's bill of complaint, which demurrer was overruled by the court, and subsequent thereto the defendants filed their answer (Trans., 21), admitting that the assessment was made and the taxes extended pursuant thereto as alleged in appellee's bill of complaint, but denying specifically all charges of fraud, illegality, inequality and discrimination. A replication was filed to said answer and the case was thereafter heard upon proof offered by the respective parties before Master in Chancery Bishop of said court. (C. U. T. Co., Trans., 98.)

On the 19th day of May, 1906, the City of Chicago filed an intervening petition alleging that it was the beneficial owner of the greater portion of the taxes here in controversy, and asking that it be made a party to this cause, and that it be permitted to file an answer, and thereafter (C. U. T. Co., Trans., 1267) an order was entered granting the prayer of said petition.

A vast amount of evidence was taken before the Master in behalf of the appellee, but an examination of this record will disclose that all of that evidence, in so far as it was material to the issues in this case, may be classified under the following subdivisions:

1. The testimony of four out of twenty of the members of the State Board of Equalization, who

made the assessments complained of in reference to the operation of their own minds at the time the assessments were made.

2. Certain extracts from the reports of the Railroad and Warehouse Commissioners for the State of Illinois and the reports of the Board of Agriculture of the State of Illinois.

3. Certain extracts from the records of the Union Stock Yards and Transit Company in reference to the value of horses, cattle and hogs within the State of Illinois, and certain extracts from Brown's Directory of American Gas Companies, both of said publications being private compilations.

4. A statement purporting to show the number of horses, cattle and hogs in the State of Illinois, returned for taxation in the year 1900 by the local assessors, as compared with the number purported to be shown in the state by the United States Census Report of 1890; and certain statements purporting to show the aggregate assessments and the total value of the property assessed in the State of Illinois and Cook County from 1873 to 1900.

5. The records of the proceedings of the State Board of Equalization showing the assessments made on the capital stock and franchises of the corporations above named during the years 1899, 1900 and 1901, and certain extracts from the records of the Board for prior years.

6. The testimony of the officers and agents of the complainant corporations in reference to the amounts and values of their properties in the City of Chicago on the 1st day of April, 1900.

The first four items of evidence above quoted were received in evidence over the objection of appellant's counsel.

On the 25th day of April, 1902, when the applica-

tion of appellee for a preliminary writ of injunction came on to be heard, the court entered an order (C. U. T. Co., Trans., 3), that the capital stock and franchises of appellee should be assessed by capitalizing the true net income of appellee for the fiscal year covering April 1, 1900, upon a basis of six per cent, and ordered said cause referred to a Master, and directed said Master to ascertain the amount of additional tax to be paid by appellee pursuant to said plan.

The Master filed a preliminary report (Trans., 27), in which said Master reported that appellee should pay $133,948.02 in addition to the tax previously paid, said sum to be in full of all taxes to be paid by appellee upon its capital stock and franchises for the year 1900.

On November 19, 1904, the Master filed his final report in this cause (C. U. T. Co., Trans., 97), in which he found that the material allegations of complainant's bill had been proved, and that no further taxes were due from appellee under the plan of assessment promulgated by the Circuit Court.

To that report exceptions were duly filed and thereafter said cause came on to be heard before the court, and on the 25th of June, 1906, the Circuit Court handed down an opinion (Trans., C. U. T. Co., 1277), in which he held that the material allegations of appellee's bill of complaint had been proved; that the payment theretofore made of $133,948.02 was all the taxes that appellee should pay and that all of the appellants be perpetually enjoined from collecting or attempting to collect the balance of said taxes, amounting to the sum of $201,085.29.

From that decree an appeal was prayed by the appellants to this court.

Appellants' various assignments of errors have

been classified in the specifications of errors under four subdivisions:

I. The Circuit Court erred in refusing to dismiss this cause for want of jurisdiction.

II. The Circuit Court erred in admitting incompetent evidence in behalf of appellee and in refusing to hold that there was no competent evidence tending to prove the allegations of appellee's bill of complaint.

III. The Circuit Court erred in not holding that appellee has not made out a case entitling it to relief in a court of equity.

IV. The Circuit Court erred in enjoining the collection of the taxes in question without requiring appellee to pay $201,085.29 in addition to the amount already paid.

The various assignments of error will be considered in our argument under the same subdivisions.

SPECIFICATION OF ERRORS.

I.

The Circuit Court erred in refusing to dismiss this cause for want of jurisdiction.

First: The said Circuit Court erred in failing and refusing to dismiss this cause for want of jurisdiction in a Federal Court, appearing upon the face of complainant's bill of complaint.

Second: The said Circuit Court erred in failing to dismiss complainant's bill of complaint for want of jurisdiction because the undisputed evidence in this record shows that a Circuit Court of the United States is without jurisdiction to hear and determine the matters and things charged in complainant's bill.

Third: The said Circuit Court erred in refusing

to hold that the allegations of the complainant's bill of complaint show that the complainant has not been denied by the State of Illinois or its officers, any right, privilege or immunity guaranteed to the complainant by the Fourteenth Amendment to the Constitution of the United States.

Fourth: The said Circuit Court erred in refusing to hold that the allegations of complainant's bill of complaint show that the complainant has not been deprived of its property without due process of law, in violation of the Constitution of the United States.

Fifth: The said Circuit Court erred in refusing to hold that the State of Illinois had not denied to the complainant the equal protection of its laws within its jurisdiction.

Sixth: The said Circuit Court erred in refusing to find that the sole grievance complained of in complainant's bill of complaint is that the officers of the State of Illinois charged with the duty of making a fair and equal assessment of the complainant's capital stock, have made an assessment that is unfair and unequal, contrary to and in violation of the Constitution and the Laws of the State of Illinois; and said Circuit Court likewise erred in assuming and retaining jurisdiction of this cause, when, upon the face of complainant's bill of complaint, it appears that the said Circuit Court was without jurisdiction.

Seventh: The said Circuit Court erred in refusing to hold that inasmuch as the complainant and defendants were all citizens of and residents of the State of Illinois, a Federal Court had no jurisdiction in this cause to hear and determine the fairness, equality or regularity of the assessment made against the complainant, and the said Circuit Court erred in refusing to dismiss this cause for want of jurisdiction.

II.

The Circuit Court erred in admitting incompetent evidence in behalf of appellee and in refusing to hold that there was no competent evidence tending to prove the allegations of appellee's bill of complaint.

Ninth: The said Circuit Court erred in overruling the objections and exceptions and each and every of said objections and each and every of said exceptions to the said Master's reports and to each of them.

Tenth: The said Circuit Court erred in approving and confirming the Master's reports and each of them, filed in this cause.

Eleventh: The said Circuit Court erred in failing and refusing to sustain the objections and each and every of the same filed by the defendants to said Master's reports and to each of said reports.

Twelfth: The said Circuit Court erred in finding that all of the material allegations of the bill of complaint are sustained by the evidence and likewise in finding that the equities of the case are with the complainant.

Thirteenth: The said Circuit Court erred in failing to find that the material allegations of the bill of complaint in this cause have not been proved by any competent evidence.

Fourteenth: The said Circuit Court erred in finding that the assessment made by the State Board of Equalization of the State of Illinois, at its session in 1901 against the complainant, upon its capital stock for the year 1900, amounting to $5,001,300, was made under the coercive influence of a writ of mandamus issued by the Circuit Court of Sangamon County, in the State of Illinois, and did not repre-

sent the real or independent judgment of the said State Board of Equalization.

Fifteenth: The said Circuit Court erred in failing and refusing to find that the assessment, amounting to $5,001,300 made by the State Board of Equalization of the State of Illinois at its session in 1901 against the complainant, upon its capital stock for the year 1900, was made by the said State Board of Equalization in the exercise of its own judgment and upon its official responsibility.

Sixteenth: The said Circuit Court erred in finding that the assessments made by the State Board of Equalization at its meeting, held in 1901, upon the capital stock of said complainant and upon the capital stock of the other corporations for the year 1900, named in the writ of mandamus, issuing from the Circuit Court of Sangamon County, Illinois, were in fact made upon a materially different basis from that upon which the capital stock of all other corporations of the same class were assessed by the State Board of Equalization for the year 1900, and also upon a basis materially different from that upon which all other taxable property in the State of Illinois was assessed for the year 1900.

Seventeenth: The said Circuit Court erred in refusing and failing to find that the only competent evidence contained in the record in this cause showed that the assessments made by the State Board of Equalization at its meeting held in 1901 upon the capital stock of said complainant, and upon the capital stock of the other corporations for the year 1900, named in the writ of mandamus issuing from the Circuit Court of Sangamon County, Illinois, were in fact made upon the same or a similar basis as that upon which the capital stock of all other corporations of the same class were assessed

by the State Board of Equalization for the year 1900, and also that said assessments as to each of said corporations were made upon the same or a similar basis upon which all other taxable property in the State of Illinois was assessed for the year 1900.

Eighteenth: The said Circuit Court erred in finding that said assessment made in 1901 on the capital stock of complainant, was made under the coercive influence of a writ of mandamus, issuing from the Circuit Court of Sangamon County, Illinois, without the exercise or application of the judgment of the State Board of Equalization or the members thereof, to the ascertainment of the value of said capital stock and without the State Board of Equalization, either in fact or in form, taking into consideration the basis upon which all other taxable property in the State of Illinois was assessed and taxed for the year 1900 and without in fact or in form equalizing the valuation or assessment of the capital stock of said complainant for the year 1900 with all or any of the assessments made upon the other taxable property in the State of Illinois for the year 1900, with the result that said assessment made on the capital stock of the complainant, in the year 1901 for the year 1900, was made on a much higher basis than that upon which the other taxable property of the State of Illinois was assessed and taxed for the year 1900.

Nineteenth: The said Circuit Court erred in refusing and failing to find that the assessment made in the year 1901 on the capital stock of the complainant, was made without any coercion and in the exercise of the independent judgment of the State Board of Equalization and the members thereof, for the purpose of ascertaining the fair value of the

capital stock of said complainant, and that said assessment was obtained and resulted from the said State Board of Equalization equalizing the valuation or assessment of the capital stock of said complainant for the year 1900 with all of the assessments made upon other taxable property in the State of Illinois, and that the assessment so arrived at was just and fair to the said complainant.

Twentieth: The said Circuit Court erred in finding that the making of the assessment for the year 1900 upon the capital stock of said complainant, and the extension of the taxes thereon, and the attempt to enforce the payment of the taxes so extended, from complainant, was and is a violation of the Fourteenth Amendment to the Constitution of the United States.

Forty-second: The said Circuit Court erred in admitting and receiving in evidence, over the objection and exception of defendants' counsel, oral testimony for the purpose of explaining, varying and contradicting the official acts, records and proceedings of the State Board of Equalization for the years 1900 and 1901, wherein and whereby said Board made the assessment against the property of the complainant sought to be enjoined in this cause.

Forty-third: The said Circuit Court erred in refusing and failing to hold that parol evidence was incompetent, for the purpose of explaining, varying or contradicting the official acts, records and proceedings of the State Board of Equalization of the State of Illinois, in reference to the assessments on the capital stock of the complainant, made by the said Board in the year 1901, for the year 1900.

Twenty-third: The said Circuit Court erred in admitting and receiving in evidence over the objection and exception of defendants' counsel, the fol-

lowing testimony of Samuel M. Barnes, a member of the State Board of Equalization, of the State of Illinois, for the years 1900 and 1901:—

I heard the members of the State Board of Equalization discuss the remarks of the court on the application for an extension of time to make return to the writ of mandamus. My recollection of one remark that I heard was that it was a mere question of the Board's getting their pencils and getting to work and they ought to do it. I heard one of the Board say that the court was very vituperative in this matter. I think it was either Mr. Schaefer or Mr. Hopkins of the Committee on the Board who was over there listening to the court. The impression I got was very strongly fixed in my mind and it was that his attitude was intensely hostile to the Board and I was told by those who heard him that it was in the shape of a roast from start to finish as far as his manner was concerned. Of course, I cannot just quote the language he used, but rather his manner I was told was vituperative, absolutely so. I was told this by members of the State Board of Equalization who were present and heard the remarks of the judge. The reassessment as we determined it, was made with a view to satisfying the court, the order of the court. We made no deduction, if I remember rightly, on account of that all of these companies but two had in 1900 been assessed upon their capital stock. We did not take into consideration the fact, if it was a fact, that other property in the state had not been assessed at the maximum more than 70 per cent of its value. The court, in his discussion, gave an illustration of the manner in which the assessment should be made and I think he made an example of the Gas Company here; in any event one of the companies he made an example

of that and in that example he said just how the assessment should be made and as this was an order of the court, we followed that example that he gave in a general way, for all these assessments. Mr. Smith and Mr. Greenacre furnished these tables (referring to complainant's Exhibit A, 10/23/03), said document being a compilation of the value of the capital stock of said companies, prepared by Miss Goggin and Miss Haley, as members of the Teachers' Federation. Our desire in making this re-assessment was in order to satisfy the Circuit Court of Sangamon County, because it was not my judgment that it was a proper assessment. The general idea seemed to be with the committee on capital stock that the action of the committee was dictated by the court. It was discussed between the committee on capital stock at about the time the re-assessment was reported to the Board and the first object to be attained was to satisfy the court. The assessments that were made subsequent to this assessment of 1900 were based on what we believed to be the law and in a general way on the judgment of the members, that is on the real value. The assessment for 1901 we regarded as representing our real judgment and the other we did to satisfy the court. The restraining order issued by the court was dissolved on the 22nd of November and I think it was a very short time after that on that day that we made our return to the writ.

Twenty-fourth: The said Circuit Court also erred in admitting in evidence, over the objection of defendants' counsel, the testimony of Frank P. Martin, a member of the State Board of Equalization, which was in substance the same as the testimony of said Barnes.

Twenty-fifth: The said Circuit Court erred in

receiving in evidence, over the objection of defendants' counsel, the testimony of John S. Cruttenden, a member of the State Board, which was in substance the same as the testimony of said Barnes.

Twenty-sixth: The said Circuit Court erred in receiving in evidence, over the objection of defendants' counsel, the testimony of Louis D. Hirsheimer, a member of the State Board of Equalization, which was in substance the same as the testimony of said Barnes.

Twenty-eighth: The said Circuit Court erred in receiving in evidence, over the objection of the defendant, the report of the Railroad and Warehouse Commissioner of the State of Illinois for the year 1900, and the report of the Commissioner of Agriculture of the State of Illinois for the same year, and Brown's Directory of American Gas Companies.

Thirty-second: The said Circuit Court erred in admitting in evidence, over the exception of defendant, the statement, being Ward Exhibit C, purporting to show live stock returned for taxation in 1900 by local assessors as compared with live stock according to the U. S. Census returns.

III.

The Circuit Court erred in not holding that appellee had not made out a case entitling it to relief in a court of equity.

Twenty-second. The said Circuit Court erred in ordering, adjudging and decreeing that the assessment of $5,001,300 on the capital stock of the complainant, made by the State Board of Equalization in the year 1901 for the year 1900, and all taxes levied and extended

thereon and now spread upon the books of the tax collecting agencies in the City of Chicago, County of Cook and State of Illinois, for collection, are, and each of them is, illegal, null and void, and that the defendants Samuel B. Raymond, County Treasurer of Cook County, Illinois, and ex-officio County Collector of Cook County, Illinois, and ex-officio Town Collector of the Town of South Chicago, and John J. Hanberg, his successor as County Treasurer of Cook County, Illinois, and ex-officio County Collector of said county, and ex-officio Town Collector of the Town of South Chicago, in said county, and his successor and successors in office as such County Treasurer and ex-officio County Collector and ex-officio Town Collector of the said Town of South Chicago, and the defendant, Maurice Fitzgerald, Town Collector of the Town of South Chicago, and the defendant, the City of Chicago, and each of them and each and every of their respective agents, deputies, servants, attorneys and representatives, be and are perpetually enjoined and restrained from in any wise levying or collecting or in any manner attempting, directly or indirectly, to levy or collect or to enforce against the complainant or against any of its property, said tax or taxes, or any or either of them, or any part thereof.

IV.

The Circuit Court erred in enjoining the collection of the tax in question.

Twenty-first: The said Circuit Court erred in entering the order on the 28th day of June, 1902, to the effect that the complainant should pay, in addition to the tax already paid, upon the first or original capital stock assessment for the year 1900,

the further sum of $133,948.02, making a total capital stock tax to be paid by complainant for the year 1900 of $192,517.02, which was found and decreed by the court to be all that complainant should equitably be required to pay as a capital stock tax for the year 1900, for said Circuit Court should have found, if it had jurisdiction of this cause and of the parties hereto, that the complainant should be required to pay the aggregate amount of all taxes assessed against it in the year 1901 as and for the year 1900 upon its capital stock, aggregating $5,001,300.

Twenty-second: The said Circuit Court erred in ordering, adjudging and decreeing that the assessment of $5,001,300 on the capital stock of complainant, made by the State Board of Equalization in the year 1901 for the year 1900, and all taxes levied and extended thereon, and now spread upon the books of the tax collecting agencies in the City of Chicago, County of Cook and State of Illinois, for collection, are and each of them is illegal, null and void, and that the defendants Samuel B. Raymond, County Treasurer of Cook County, Illinois, and ex-officio County Collector of Cook County, Illinois, and ex-officio Town Collector of the Town of South Chicago, and John J. Hanberg, his successor as County Treasurer of Cook County, Illinois, and ex-officio County Collector of said County and ex-officio Town Collector of the Town of South Chicago in said County, and his successor and successors in office as such County Treasurer and ex-officio County Collector and ex-officio Town Collector of said Town of South Chicago, and the defendant Maurice Fitzgerald, Town Collector of the Town of South Chicago, and the defendant, the City of Chicago, and each of them, and each and every of their respective agents, deputies, servants, attorneys and representatives, be

and are perpetually enjoined and restrained from in anywise levying or collecting, or in any manner attempting, directly or indirectly, to levy or collect, or to enforce against the complainant, or against any of its property, said tax or taxes, or any or either of them, or any part thereof.

BRIEF OF ARGUMENT.

I.

THE CIRCUIT COURT ERRED IN REFUSING TO DISMISS THIS CAUSE FOR WANT OF JURISDICTION.

(a) Equality and uniformity of taxation is not a right guaranteed by the Federal Constitution.

(b) Where the ministerial officers of a state, contrary to the constitution and laws of that state, deprive a person of his property, without due process of law, no federal question is presented, for their acts will not be imputed to the state, but in such a case it will be presumed that the courts of the state will give full relief.

(c) The session of the State Board was public, and appellee had an opportunity to be present and be heard. This constituted due process of law.

II.

THE CIRCUIT COURT ERRED IN ADMITTING INCOMPETENT EVIDENCE IN BEHALF OF APPELLEE AND IN REFUSING TO HOLD THAT THERE WAS NO COMPETENT EVIDENCE TENDING TO PROVE THE ALLEGATIONS OF APPELLEE'S BILL OF COMPLAINT.

(a) The testimony of the individual members of the State Board in reference to the operation of their

minds at the time they made the assessment complained of was incompetent.

(b) The extracts from the report of the Railroad and Warehouse Commissioners and the Board of Agriculture were incompetent.

(c) The figures taken from the books of the Union Stock Yards and Transit Company and Brown's Directory of American Gas Companies were incompetent.

(d) The alleged discrepancy between the Census Report and the Assessors' returns with reference to the amount of live stock within the State of Illinois, during the year 1900, did not prove any issue in this case.

(e) The records of the State Board did not sustain the allegations of appellee's bill.

(f) The testimony of the officers of appellee in reference to the value of its property on April 1, 1900, did not make out a case.

III.

THE CIRCUIT COURT ERRED IN REFUSING TO HOLD THAT APPELLEE HAD NOT MADE OUT A CASE ENTITLING IT TO RELIEF IN A COURT OF EQUITY.

(a) If the re-assessment complained of was void and illegal because the Board had exhausted its power in making the first assessment, then appellee had an adequate remedy at law, for it could have paid the void assessment and then have recovered the money back.

(b) Overvaluation of property by an assessing body, unaccompanied with fraud or bad faith, furnishes no ground for equitable intervention.

(c) Appellee was guilty of *laches* and iniquity, and has not offered to do equity.

IV.

THE CIRCUIT COURT ERRED IN ENJOINING THE COLLECTION OF THE TAX IN QUESTION WITHOUT REQUIRING APPELLEE TO PAY $201,085.29, BEING THE AMOUNT NOW DUE IN ADDITION TO THE TAX ALREADY PAID.

(a) The Circuit Court erred in assessing appellee upon its alleged net income instead of upon the fair market value of its capital stock.

(b) There was no competent evidence tending to show the net income of appellee.

ARGUMENT.

I.

THE CIRCUIT COURT SHOULD HAVE DISMISSED THIS CAUSE FOR WANT OF JURISDICTION.

The Constitution of the State of Illinois (Sec. 1, Art. 9) guarantees to persons and corporations within the states equality and uniformity of taxation. The statutes of the State of Illinois enacted pursuant thereto provide (Sec. 108, Hurd's Revised Statutes, 1899, p. 1412) that the State Board of Equalization shall assess the capital stock and franchises of corporations at its fair cash value.

It will be observed that the foregoing statutory and constitutional provisions imposed upon the State Board of Equalization the duty of assessing the capital stock and franchises of corporations at its fair cash value in precisely the same way that all other property throughout the state is assessed.

The Supreme Court of Illinois has repeatedly held that it is the duty of the assessing officers of the State of Illinois, to carry out the constitutional

and statutory provisions, in reference to uniformity and equality of taxation.

The Circuit Judge in his opinion (C. U. T. Co. Trans., 1297) held that the failure of the State Board of Equalization to carry out the constitutional and statutory provision above quoted, guaranteeing equality and uniformity of taxation, constituted a violation of the 14th Amendment, and gave a Circuit Court of the United States jurisdiction of this cause regardless of the citizenship of the parties.

An examination of the decisions of this court will plainly demonstrate that the Circuit Judge was in error in his fundamental assertion in this case, that any substantial departure from the laws of the State of Illinois, on the part of the officers of the State of Illinois, in levying and collecting taxes, constituted the taking of property, without due process of law, in violation of the Federal Constitution.

A.

The law is well settled by the decisions of this court that equality and uniformity of taxation is not a right guaranteed by the Federal Constitution.

The following are a few of many decisions of this court laying down the above rule:

State Railway Tax Cases, 92 U. S., 575, 618.

Davidson v. *Board of Admrs. of New Orleans,* 96 U. S., 97.

Kelly v. *City of Pittsburgh,* 104 U. S., 78.

Merchants & Manufacturers Nat. Bank v. *Pennsylvania,* 167 U. S., 461-4.

Henderson Bridge Co. v. *City of Henderson,* 173 U. S., 592.

Magoun v. *Ill. Trust & Sav. Bank,* 170 U. S., 283, 293, 295.

Connolly v. *Union Sewer Pipe Co.,* 184 U. S., 540, 562.

State of Missouri ex rel. Hill v. *Dockery*, 191 U. S., 165, 170.

Travelers Ins. Co. v. *Connecticut*, 185 U. S., 364, 371.

See also Brief in *C. U. T. Co.* case, p. 39.

Should we, however, concede that equality and uniformity of taxation is guaranteed under the 14th Amendment, appellee's bill of complaint does not make out a case giving the Circuit Court jurisdiction, for the alleged wrongful acts of the State Board of Equalization were not the acts of the state within the meaning of the 14th Amendment.

B.

Where the constitution and the laws of a state are just and fair and the sole grievance of which a party complains is that the officers of the state, charged with executing those laws, have deprived that party of his property, contrary to the constitution and the laws of the state, and in violation of the terms thereof, no federal question is presented, for, under the above circumstances, it will be presumed that the state courts will give full relief against the illegal and unauthorized acts of the officers of the state.

The above proposition is sustained by the following authorities:

Strauder v. *West Virginia*, 100 U. S., 303.

Virginia v. *Rives*, 100 U. S., 313.

Civil Rights Cases, 109 U. S., 3.

Kentucky v. *Powers*, 201 U. S., 1.

Barney v. *City of New York*, 193 U. S., 430.

Manhattan Railway Company v. *City of New York*, 18 Fed., 195.

Coulter v. *Louisville & N. R. Co.*, 196 U. S., 599.

See also Brief in *C. U. T. Co.*, p. 46.

C.

Equally untenable is the claim in appellee's bill of complaint that under the circumstances there described the appellee was deprived of its property without due process of law, because it had no opportunity to be heard at the time the assessment complained of was levied against it.

The time and place of the sessions of the State Board of Equalization were fixed by law, those sessions were public, and the appellee had an opportunity to be present and be heard. Such a proceeding constitutes due process of law.

Michigan S. R. R. Co. v. *Powers,* 201 U. S., 245, 301.

Public Clearing House Co. v. *Coyne,* 194 U. S., 497.

II.

THERE IS NO COMPETENT EVIDENCE IN THIS RECORD TENDNG TO SUSTAIN THE MATERIAL ALLEGATIONS OF APPELLEE'S BILL OF COMPLAINT WITH REFERENCE TO THE ASSESSMENT COMPLAINED OF.

We will take up each of the items of evidence offered by appellee before the Master and show that evidence was incompetent and should be disregarded by this court.

A.

The testimony of the individual members of the State Board of Equalization in reference to the operation of their minds at the time they made the assessment complained of was incompetent and should have been excluded by the Circuit Court.

Four out of the twenty members of the State Board of Equalization, that made the assessment

complained of, were called to the witness stand before the Master by the appellee and they testified in substance that they did not equalize the assessment of appellee's property with the assessments made upon other property throughout the state for the same year, and that they put down what they believed the State Circuit Court wanted them to put down.

By this means they were permitted to contradict their official acts, as evidenced by the record of the State Board. This evidence was incompetent and should have been excluded.

Wright v. *City of Chicago*, 48 Ill., 285.
Quick v. *Village of River Forest*, 130 Ill., 323, 325.
Ryder Estate v. *City of Alton*, 175 Ill., 94.
Republic Life Ins. Co. v. *Pollak*, 75 Ill., 292.
Fayerweather v. *Ritch*, 195 U. S., 276.
Coulter v. *Louisville & N. R. Co.*, 196 U. S., 599.
Brief, *C. U. T. Co.*, p. 79.

B.

The extracts from the report of the Railroad and Warehouse Commissioners and the Board of Agriculture of the State of Illinois were incompetent.

In order to make a public record competent evidence of the facts therein recited, two things are necessary: First, that the fact therein recited is required by law to be reported by the official; second, that the person recording the fact must have had personal knowledge of the matters he was registering at the time.

The above reports do not conform to either of said requirements, and were therefore incompetent.

Hegler v. *Faulkner*, 153 U. S., 109.

Chaffee v. *U. S.*, 18 Wall., 516.
Swift v. *State of New York*, 89 N. Y., 52.
Brief, *C. U. T. Co.*, p. 92.

C.

The figures taken from the books of the Union Stock Yards and Transit Company and from Brown's Directory of American Gas Companies were not competent evidence and should have been excluded.

The above publications were private compilations, and the witness who produced said figures admitted that he had no knowledge as to whether the figures were correct. Under the above circumstances the publications should have been excluded.

State v. *Daniels*, 44 New Hampshire, 383.
Richardson Bros. & Co. v. *Stringfellow*, 100 Ala., 416, 418.
Langley v. *Smith*, 3 New York St. Rep., 276.
See also authorities cited in *C. U. T. Co.* Brief, p. 102.

D.

The alleged discrepancy between the United States Census Report and the Assessors' return with reference to the amount of live stock within the State of Illinois during the year 1900 does not tend to prove any fact in this case.

Live stock could be assessed and at a different rate and in a different manner than the property of street railroads, gas, telephone and electric light companies, without infringing on the right guaranteed by the Federal Constitution.

E.

The records of the State Board of Equalization do not sustain any of the allegations of appellee's bill.

Appellee offered in evidence certain resolutions contained in the minutes of proceedings of the State Board of Equalization for certain years prior to 1893, to the effect that in the opinion of the Board the real and personal property of the state during the years in question had been assessed at less than its full cash value.

Prior to 1898 assessors were required to value property at its fair cash value. By the terms of the Act of July 1st, 1898, assessors were required to set down in one column the full value of real and personal property and in another column one-fifth of said full value, which latter sum should be the assessed value. This statute was enacted for the very purpose of doing away with the practice of undervaluing property which it is claimed had existed prior thereto. Evidence of undervaluations prior to the Act of 1898 does not tend to prove the existence of undervaluations thereafter.

Coulter v. *Louisville & N. R. Co.*, 196 U. S., 599.

III.

APPELLEE HAS NOT MADE OUT A CASE ENTITLING IT TO RELIEF IN A COURT OF EQUITY.

A.

If the contention of appellee be well taken, namely, that the re-assessment of 1900 was void and illegal because the Board had exhausted its powers in making the first assessment, then appellee had an adequate remedy at law, for it could have paid the

void assessment and then have recovered the money back.

Shelton v. *Platt*, 139 U. S., 591.

Allen v. *Pullman Pal. Car Co.*, 139 U. S., 658.

Pacific Express Co. v. *Seibert*, 142 U. S., 339.

B.

Overvaluation of property by an assessing body unaccompanied with fraud or bad faith furnishes no ground for equitable intervention.

There are many general allegations in appellee's bill, but when those allegations are reduced to their lowest terms, the whole bill (aside from the claim that the second assessment was void) is that the property of the appellee was assessed at a higher proportionate amount than was the property of other persons and corporations throughout the State of Illinois for the same year. The above allegations are insufficient to justify relief in a court of equity.

Pittsburgh C. C. & St. L. R. Co. v. *Backus*, 154 U. S., 421, 434.

Maish v. *Territory of Arizona*, 164 U. S., 599, 611.

C.

Before a court of equity will grant an injunction to restrain the collection of a tax on the ground of excessive valuation and unfair discriminations on the part of the assessors, complainant must distinguish by his bill the legal from the illegal part of the tax, and must actually pay the tax which is due; otherwise he is not entitled to relief.

Albuquerque Nat. Bk. v. *Perea*, 147 U. S., 87.

State Railway Tax Cases, 92 U. S., 575, 616.

National Bank v. *Kimball*, 103 U. S., 733.

IV.

THE UNDISPUTED EVIDENCE SHOWS APPELLEE OUGHT TO PAY $48,632.37 MORE THAN IT WAS REQUIRED TO PAY BY THE ORDER OF THE CIRCUIT COURT.

Even if we assume that the Circuit Court had jurisdiction of this cause, that the appellee has established the allegations of its bill by competent evidence, that the re-assessment for the year 1900 was illegal and void, and that the Circuit Court had the power to make a re-assessment, then appellee was only entitled to the following relief:

First, to receive credit for the $58,569.00 paid on the original assessment; second, to have its capital stock and franchises assessed at 70 per cent of its actual cash value instead of at 100 per cent, which latter sum it is claimed the State Board of Equalization used as the basis for its assessment.

The rules of the State Board of Equalization under which all other corporations were assessed for the year 1900, required that the market value or fair cash value of the corporation's shares of stock should be added to its debt (excluding indebtedness for current expenses) and that the aggregate should be the fair cash value of the capital stock and franchises of such corporation.

The above method of assessment was the one directed to be made by the writ of mandamus of the Circuit Court, and has been held to be the proper method of assessing capital stock and franchises of Illinois corporations under the very statute now in question.

State Board of Equalization v. *People*, 191 Ill., 528.

State Railroad Tax Cases, 92 U. S., 575.

The Circuit Court ignored the fair cash value of

the stock of appellee, and capitalized the alleged net income at six per cent (taking such net income from certain lump sums shown by the company's books) and by these means placed so insignificant a valuation upon the capital stock and franchises of appellee that it was permitted to escape the payment of the greater share of its tax for the year 1900.

The Circuit Court, in arriving at the amount of the additional tax to be paid by appellee for the year 1900, followed the computation made by the Master; the Master in turn adopted the figures and method of computation furnished to him by the Company's experts.

We have presented three tables below, numbered respectively (1), (2) and (3). Table (1) showing the computation made by the Master, which was approved by the Circuit Court; Table (2) showing the amount of taxes due under the rules of the State Board of Equalization, which were approved by this court in the *State Railroad Tax Cases, supra,* and Table (3), showing the tax still remaining due and unpaid on appellee's own theory, that 1/5 of 70 per cent of the full value of the capital stock and franchises of the appellee should be used instead of the full value, which it is claimed the State Board took:

(1)

Earnings before deducting taxes	$ 1,693,686.74
Additional tax	133,948.02
Net income	$ 1,559,738.72
Capitalized at 6%	25,995,645.33
Equalized at 70%	18,196,951.73
1/5 for assessed value	3,639,390.35
Extending tax at .0787	286,420.02
Deducting tax already paid	152,472.00
Leaving to be paid under the decision of the United States Circuit Court	$ 133,948.02

Making an assessment of the capital stock of said corporations in accordance with the rules approved by this court in the *State Railroad Tax Cases, supra*, we would get the following result:

(2)

Capital stock value as required by law	$25,006,500.00
1/5 valuation upon which taxes are to be extended	5,001,300.00
Extending tax at .0787	393,602.31
Deduct tax paid on original assessment	58,569.00
Leaves	$ 335,033.31
Deduct tax assessed by U. S. Cir. Ct.	133,948.02
Tax yet due	$ 201,085.29

The above assessment is made by taking one-fifth of the full value of the capital stock and franchises of the above corporations.

Should we assume that appellee's contention be sound, that one-fifth of 70 per cent of the full value of the capital stock and franchises of the appellee should be taken, then we get the following results:

(3)

Full value of capital stock, including franchise (C. U. T. Trans., 242)	$30,619,000.00
70% of that amount	21,433,300.00
1/5 of that amount, to make assessed value	4,286,660.00
Deduct equalized assessed value of tangible property (C. U. T. Co. Trans., 242)	1,222,500.00
Leaves net assessed value of capital stock	$ 3,064,160.00
Extend tax at .0787	241,149.39
Deduct tax paid on original assessment	58,569.00
Leaves	$ 182,580.39

Deduct tax paid by order of U. S. Cir. Ct.	133,948.02
Leaves ..... tax remaining unpaid on complainant's own theory of equalizing the full value of the capital stock by taking one-fifth of 70 per cent of the same.	$ 48,632.37

It appears from the foregoing figures that if the Circuit Court had followed the method of assessment approved by this court in the *Railroad Tax Cases, supra,* then even after equalizing the value by taking one-fifth of 70 per cent, the appellee would have been required to pay $48,632.37 more than it was ordered to pay by the Circuit Court.

There are many other inaccuracies in the method of computation which have been fully pointed out in the brief filed in the *Chicago Union Traction Company* case, to which reference is here made for a full discussion of the question. (Brief, *Chicago Union Traction Company,* p. 145.)

C.

The decree of the Circuit Court was also inequitable and unfair in that it permitted the appellee to pay the additional taxes of $133,948.02 on July 1, 1902, and not paying any interest on the same.

Taxes levied for the 1st of April, 1900, became delinquent under the laws of the State of Illinois on the 1st of May, 1901, and taxes thereafter remaining unpaid drew interest at the rate of 1 per cent a month. Appellee, by failing to furnish any statement to the State Board of Equalization, of the value of its capital stock and franchises, and by assisting said board in attempting to maintain the first assessment which was expressly held by the

State Supreme Court to be fraudulent and void, is legally responsible for the delay in the making of the second assessment. Now, that the appellee has invoked the aid of a court of equity, it should be required to do equity. Equity requires that appellee pay its just burden of taxes and interest at the rate of 5 per cent on that amount from the time it should have been paid to the collecting officers. Appellee had the use of that money from the 1st of May, 1901, up till July 1, 1902, and no reason has been or can be suggested why it should not reimburse the state in that regard.

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DAVID K. TONE,
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HARRY A. LEWIS,
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Attorney General of the State of Illinois;
GEORGE B. GILLESPIE,
Special Assistant Attorney General of said State;
Solicitors for Appellants.

Supreme Court of the United States.

No. 426

APPELLEE'S BRIEF.

JOHN P. WILSON,

IN THE

Supreme Court of the United States.

OCTOBER TERM, A. D. 1906.

No. 426

SAMUEL B. RAYMOND, County Treasurer of Cook County, Illinois, and Ex-officio County Collector of Cook County, Illinois, *vs.* CHICAGO CITY RAILWAY COMPANY,	Appeal from the Circuit Court of the United States, for Northern District of Illinois.

APPELLEE'S BRIEF.

STATEMENT.

This case is one of a series of cases involving substantially the same questions, pending in this court, and set down for argument upon the same day. The questions involved in these cases have been fully argued in briefs filed in the other cases, by other counsel, and it is not intended in this case to reargue at length the questions already fully presented in briefs of other counsel. In this case a statement of a few of the main propositions only will be made. For a full discussion of these and other questions arising upon the record

the court is respectfully asked to consider the briefs filed for appellees in the other cases.

The taxes enjoined by the decree now before the court were extended upon a capital stock assessment made by the State Board of Equalization of Illinois under a writ of mandamus issued by the Circuit Court of Sangamon County, Illinois, under a judgment of that court which had been affirmed by the Supreme Court of Illinois. The taxes complained of were levied for the year 1900. Under the revenue statute of Illinois the State Board of Equalization have authority to make an original assessment upon the capital stock of corporations organized under the laws of the State of Illinois. It was the duty of that Board at its session in 1900 to make an assessment upon the capital stock of the Chicago City Railway Company.

The Board of Equalization did, at its regular session in the year 1900, make an assessment under the statute on the capital stock of the Chicago City Railway Company, which was duly certified to the proper officers of Cook County, taxes extended thereon and warrant issued for the collection of such taxes, which taxes were paid by the City Railway Company in due course, prior to the making of the second assessment, amounting to the sum of $58,569.

The mandamus suit in Sangamon County was brought against the State Board of Equalization without making the Chicago City Railway Company a party defendant. In this suit a judgment was entered directing the State Board to proceed to make an assessment upon the capital stock of appellee for the year 1900. In obedience to the writ of mandamus the State Board

in 1901 proceeded to and did make an assessment upon the capital stock of appellee in all respects as though no previous assessment had been made by it upon the capital stock of appellee for that year. The amount of this assessment was certified to the proper authorities of Cook County, taxes and penalties were extended upon such assessment, and a warrant issued for the collection thereof, no deduction having been made or account taken either by the State Board of Equalization or by any of the officers connected with the extension and collection of the taxes of the previous capital stock tax levied and collected from appellee for the year 1900.

Unless relief is granted in this case appellee will be compelled to pay taxes upon two separate and distinct assessments upon its capital stock for the year 1900. The second assessment, made in 1901, was made in obedience to the writ of mandamus issued in pursuance of the judgment of the Circuit Court and the decision of the Supreme Court of Illinois. The validity of this assessment and the taxes extended thereon depends upon the question as to whether appellee was bound by the judgment in that case without having been made a party thereto.

The first assessment on the capital stock in the year 1900 was made under rules adopted by the State Board of Equalization for the assessment of capital stock, which were in force and applied by that Board in the assessment of the capital stock for that year of all other corporations in the State of Illinois. These rules were held by the Supreme Court of Illinois to have been in violation of the requirements of the statute, and therefore without force. The power of the

State Board to make a new or second assessment upon the capital stock of appellee rests solely and wholly upon a valid adjudication that the first assessment was fraudulent and void. Appellee clearly had a right to be heard upon that question, and no adjudication in a suit to which it was not a party or afforded an opportunity to be heard could have any force or effect as against appellee. The Board of Equalization, after having made its first assessment upon the capital stock of appellee, and certified the same to the proper taxing officers, and having adjourned its session for that year, could not thereafter, on its own volition, legally make a new or second assessment upon the capital stock of appellee. No claim of any such power is made or could be seriously contended for. The power and authority therefore to make the second assessment rests upon the validity of the adjudication in the mandamus suit that the first assessment on the capital stock of appellee was fraudulent and void.

Appellee contends that the judgment in the mandamus suit, that the first assessment was fraudulent and void, could not be made the basis of any rights against it, because it was not a party to the suit and had no opportunity to be heard upon the question in which it had a vital interest. Appellee further contends that in no event and under no circumstances could it be compelled to pay capital stock taxes upon two distinct and separate assessments for the year 1900, and that the amount which it has already paid on its capital stock taxes for the year 1900 on the first assessment, and under the order of the Circuit Court entered in this cause, are in excess of any amount which could be fairly claimed from it as capital stock taxes for the year 1900.

BRIEF.

I.

THE CIRCUIT COURT DID NOT ERR IN REFUSING TO DISMISS THIS CAUSE FOR WANT OF JURISDICTION.

(a) The reassessment rests upon the judgment of the court in the mandamus case that the first assessment was fraudulent and void.

(b) The taxes rest upon the judgment in the mandamus suit, and if collected will be collected from appellee under that judgment.

(c) Appellee was not a party to and had no opportunity to be heard in the mandamus suit, and therefore to collect taxes from it under said judgment is taking its property without due process of law, in violation of the 14th Amendment to the Constitution of the United States.

II.

THE FACTS WHICH MAKE IT APPEAR THAT THE JUDGMENT IN THE MANDAMUS SUIT, UPON WHICH THE TAXES REST, WAS VOID, ARE ALLEGED IN THE BILL AND ARE EITHER ADMITTED BY THE ANSWER OR ARE PROVED BY COMPETENT TESTIMONY.

The bill alleges the making of the first assessment in 1900 upon the capital stock of the Chicago City Railway Company, the certification of this assessment to the proper taxing officers, the extension of taxes upon such assessment, and the collection or said taxes

from appellee. (Rec., 2 to 4.) These allegations are admitted by the answer. (Rec., 21-22.) The bill alleges the bringing of the mandamus suit against the State Board of Equalization, the proceedings therein, the issuing of the writ of mandamus, the making of the second assessment in pursuance of the writ of mandamus, and the extension upon the warrant of the capital stock tax against appellee of $393,602.31, with a penalty of $19,680.11 (for which the warrant for the collection thereof was in the hands of the collector at the date the bill was filed), making a total of $413,-282.42 (Rec., 15); and that no deduction or allowance was made for the capital stock tax already paid by appellee for the year 1900. These allegations are admitted by the answer. (Rec., 22.)

It is claimed that while it is true that appellee was not a party to the mandamus suit, that it joined in paying the fees of Mr. John S. Miller, counsel for the Board of Equalization, and was therefore in effect a party to the suit. (The facts in this regard are shown by the testimony of Mr. William G. Beale and Mr. John S. Miller, pages 180-184-188-296 to 300, Record, in No. 424.) From this evidence it appears that while some corporations, including appellee, did contribute towards Mr. John S. Miller's compensation as attorney for the State Board of Equalization, that they had no voice in his employment and no control over the defense to be made, or in the management of the case, and that they were denied the right to be heard by their own counsel by the Supreme Court of Illinois. The corporations were treated throughout as having no right to be heard in that suit.

III.

THE CIRCUIT COURT DID NOT ERR IN REFUSING TO HOLD THAT APPELLEE HAD NOT MADE OUT A CASE ENTITLING IT TO RELIEF IN A COURT OF EQUITY.

(a) The objection raised, that appellee had an adequate remedy at law, is now made for the first time, and comes too late.

Reynes v. *Dumont,* 130 U. S., 354.
Kilbourn v. *Sunderland, id.,* 505.

(b) Assuming the taxes in question to have been illegally levied, appellee had no adequate remedy at law. The taxes were levied in favor of a large number of taxing bodies (Rec., 5), to whom the same would have been paid over by the collector immediately upon payment by appellee. These taxes could have been recovered, if at all, only from the authorities receiving the same, thus leading to a multiplicity of suits. The collector would not be personally liable to refund the amount of taxes collected by him upon a warrant regular upon its face, which had been paid over by him to the authorities entitled to the same. In addition to this a portion of the taxes belonged to the State of Illinois, against which no suit could be brought for recovery after payment. There is no provision in the statutes of Illinois which authorizes a suit to recover back illegal taxes received or collected by any officer, state or municipality.

IV.

THE AMOUNT OF TAXES ALREADY PAID BY APPELLEE UPON ITS CAPITAL STOCK UNDER THE ORDER OF COURT IS IN EXCESS OF ANY AMOUNT WHICH COULD FAIRLY BE CHARGED TO APPELLEE FOR THE YEAR 1900.

ARGUMENT.

I.

THE CIRCUIT COURT DID NOT ERR IN REFUSING TO DISMISS THIS CAUSE FOR WANT OF JURISDICTION.

It is claimed by counsel for appellant that even conceding that the taxes in question and the assessment upon which the same are based, are void that no federal question is presented for consideration. The argument is largely based upon the proposition that the fourteenth amendment only prohibits the taking of property by the state without due process of law, and that the question as to whether the assessment is valid is a question involving only construction of the state statute, and that if the officers have erred in administering the statute the state courts will afford an ample remedy. Our reply to this contention is that the assessmen upon which the taxes were extended rests upon the judgment of the Circuit and Supreme Courts in the mandamus suit, and that our property is taken from us under and by virtue of that judgment which does not constitute due process of law as against us by reason of our not having been made parties to the suit, and by reason of our having had no opportunity to make defense in that case. That the property is being taken from appellee by the state through its officers is beyond controversy. The taxes are being collected by a public officer for the benefit of the state and other public authorities, which taxes are levied upon an assessment made by the State Board of Equalization

under a mandate issued in effect by the Supreme Court of Illinois, the highest authority of the state. The validity of the whole proceeding rests and depends upon the binding force and effect of the judgment in the mandamus suit upon appellee. The corporations affected by that proceeding were not made parties defendant, did not employ or control the counsel who represented the members of the State Board of Equalization, were not allowed to control or direct the defense which was made by the counsel so selected, and, what is most important of all, were denied an opportunity to be heard by their own counsel in the hearing before the Supreme Court of Illinois.

It is also contended by counsel for appellant that it cannot be claimed that the taxes levied for taxes were illegal because the time and place of holding the meetings of the State Board of Equalization are fixed by law and that therefore appellee, although given no notice of the time and place of making the assessment complained of, were bound to take notice of the time and place of making the assessment. The assessment complained of was made in the year 1901, long after the session of the board for 1900 had been finally adjourned. At its regular session the board had an assessment upon the capital stock of appellee under the rules adopted by it, and which were applied by it in making the assessment upon all other corporations for that year. Taxes had been extended upon this assessment, a warrant issued for their collection, and appellee had no option but to pay the taxes so assessed and extended, amounting to over $58,000.

It cannot be seriously contended that appellee was

bound to take notice that its capital stock had not been assessed for the year 1900 and that the State Board would meet at its regular session in 1901 for the purpose of making a capital stock assessment against appellee for the year 1900. In no event would the State Board of Equalization have authority to make two independent, distinct and separate assessments on the capital stock of appellee for the year 1900 and collect full taxes upon both of such assessments. The second assessment in this case was made after the taxes upon the first assessment had been collected by the state under legal process and was made in obedience to a writ of mandamus issued in effect by the Supreme Court of Illinois in a proceeding to which appellee was not a party.

The collection of the taxes under an assessment so made would constitute the taking of property from appellee by the state and without due process of law.

II.

THE CAUSE SHOULD NOT HAVE BEEN DISMISSED UPON THE GROUND THAT THE COMPLAINANT HAD AN ADEQUATE REMEDY AT LAW.

Counsel for appellant claim that if the reassessment upon which the taxes in question are extended are void, appellee had an adequate remedy at law in that it could have paid the void taxes and then have recovered back the money so paid, and therefore, the suit in equity should have been dismissed.

In support of this proposition three cases are cited (Argument, page 29).

In the first of these cases, *Shelton* v. *Platt,* 139 U. S., 591, the objection that the defendant had an adequate remedy at law, was raised by a plea in abatement, by a motion to quash the writ and dismiss the bill, and by the answer.

It appears from the opinion of the court that there was a statute in force in Tennessee, which expressly provided, that where it was claimed that a tax was illegal, the party must pay the tax and bring suit to recover the same against the officer receiving the tax, the statute making special provision for the payment of any judgment rendered by the state in preference to other claims on the treasury. There was no tax involved in that case except the taxes due to the state, so that a single suit would give redress under a statute expressly providing the method of procedure and of recovery. There was no claim of equitable jurisdiction in that case on the ground of multiplicity of suits, or of inability to recover from the state.

The case of *Allen* v. *Pullman Palace Car Co.,* 139 U. S., 658, which also arose in the State of Tennessee, involved the same questions, which were disposed of in the same way, special reference being had to the act of Tennessee of 1873, making provision for the recovery from the collector of any alleged illegal taxes.

In the case of *Pacific Express Co.* v. *Siebert,* 142 U. S., 349, the bill was demurred to upon the express ground that complainant had an adequate remedy at law, which demurrer was sustained, and the decision was rendered upon appeal, from the order or decree sustaining the demurrer. In that case there was no

attempt in the bill to set up any ground of equitable jurisdiction.

In the case at bar the defendant appeared and answered upon the merits, without setting up the defense that the complainant had an adequate remedy at law. The case was referred to a master, evidence at great length taken, and a final decree entered in the Circuit Court on the merits of the case. The objection that the suit should have been dismissed upon the ground that complainant had an adequate remedy at law, is not even stated in any assignment of error, either upon the record or in the brief filed in this cause. That the objection to an equity suit, upon the ground that the complainant has an adequate remedy at law, should be raised at the threshold of the proceedings, is well settled law.

In the case of *Reynes* v. *Dumont,* 130 U. S., 354, this court quotes with approval the rule of law laid down in 1st Daniel's Chancery Practice, 555, as follows:

"If a defendant in a suit in equity answers and submits to the jurisdiction of the court, it is too late for him to object that the plaintiff has a plain and adequate remedy at law. This objection should be taken at the earliest opportunity. The above rule must be taken with the qualification that it is competent for the court to grant the relief sought, and that it has jurisdiction of the subject-matter." (p. 395.)

The same doctrine was held in *Kilbourn* v. *Sunderland,* id., 505.

In this case not only was the objection to the jurisdiction in equity not raised by the answer, but the bill shows that the taxes are levied in favor of the state and numerous subordinate municipalities, to whom

these taxes must be paid over at once by the collector upon receiving them and that they could only be recovered back, if at all, by a multiplicity of suits. It is the duty of the officer upon receiving the taxes to pay these taxes over to the various municipalities entitled to receive them, and he will incur no liability by so doing. No provision is made by any statute in Illinois by which a suit could be brought against the collector for the recovery of these taxes. A portion of the taxes will be paid over to the State of Illinois, against which no suit could be brought and no recovery could be had to recover the illegal taxes. A court of equity clearly had jurisdiction of the subject-matter and the power to grant the relief asked for. The question as to whether complainant had an adequate remedy at law will not be considered for the first time at this stage of the case unless by the court on its own motion and for its own protection in the absence of any allegation or claim of any of the necessary grounds for equitable jurisdiction, such as is shown in this case of a multiplicity of suits.

III.

THE CLAIM THAT THE "APPELLEE OUGHT TO PAY $48,632.37 MORE THAN IT WAS REQUIRED TO PAY BY THE ORDER OF THE CIRCUIT COURT" IS NOT WELL FOUNDED.

See appellee's argument, page 30. Appellee has already paid a capital stock tax for the year 1900 of $192,517.02, made up of two items, viz.: $58,569.00 paid on the original assessment and $133,948.02 paid under the order of the Circuit Court as a condition of

granting an injunction. These taxes are in addition to the taxes upon all the tangible properties of the company, upon which taxes were assessed and collected as upon all other tangible property. This tax is levied upon the franchises of the corporation, consisting of certain supposed franchise rights in the streets of the City of Chicago. The rate of taxation for the year 1900 was 7-87/100 per cent. extended upon the assessed value, which was either one-fifth of seventy per cent. of the full value or one-fifth of the full value, if the valuation is not equalized to correspond to the assessment of all other property. This represents a full tax upon a valuation of the franchises at twelve millions of dollars and upwards if we compute the tax upon the full value instead of seventy per cent., and upon a valuation of over seventeen millions if the assessed valuation is equalized on the same basis as the assessment of all other taxable property for that year.

In the year 1900 the franchise rights of appellee were in controversy between the company and the city. The actual value of these rights were incapable of accurate determination or ascertainment until that controversy should be finally adjudicated in the courts. That controversy was settled adversely to the company in the recent decision of this court in the Chicago traction cases. Pending the controversy there were not sales of sufficient quantities of stock of the company to establish any market value. If it be conceded that the reassessment for 1900 is invalid, then the company should only be required as a condition of obtaining relief to pay a tax upon the full value of its capital stock in the year 1900.

Appellee has already paid more than the full tax upon all of its property for the year 1900. The warrant issued upon the reassessment against appellee called for the payment of $413,282.44. Upon this amount complainant has paid $133,948.02, under order of court, leaving $279,234.42 called for by the warrant, with interest from the date of its issuance. There is not even a pretense or a claim by counsel for appellant that there is any equitable basis for enforcing the payment of this entire sum from complainant. Criticism is made by counsel upon the basis adopted by the court for determining the amount which should equitably be collected from appellee. The rule adopted operated harshly upon appellee, and under its application appellee has been compelled as a condition to getting relief to pay an excessive capital stock tax, owing to the fact that the earning capacity of the company was dependent upon franchises of short duration, and therefore in the case of this particular company did not afford a fair basis of capitalization to determine the value of its capital stock. But these taxes have been paid and we do not care to discuss the grounds upon which the court adopted the rule as they are fully presented by counsel in the other cases. In the event that the court should find that the rule adopted was erroneous, it is clear that what complainant should pay is a tax upon the value of the property owned by it in the year 1900. This value can not be determined by the price at which a few shares of stock sold at in April, 1900, pending the vital controversies as to its franchises, which controversies have now been settled adversely to the company.

We have now, under the decisions of this court, very important additional light by which to determine the value of the company's franchises. If the question as to the amount of taxes equitably due from appellee is to be reopened, it can and will be shown that appellee has already paid a largely excessive tax upon its entire capital stock and franchises for the year 1900.

We respectfully submit that the decree of the Circuit Court should be affirmed.

JOHN P. WILSON,
Atty. for Appellee.

IN THE

Supreme Court of the United States.

OCTOBER TERM, A. D. 1906.

No. 426

SAMUEL B. RAYMOND, County Treasurer of Cook County, Illinois, and Ex-Officio County Collector of Cook County, Illinois, vs. CHICAGO CITY RAILWAY COMPANY.	Appeal from the Circuit Court of the United States, for Northern District of Illinois.

ADDITIONAL BRIEF FOR APPELLEE.

STATEMENT.

Upon the oral argument of the series of cases, of which No. 426 of the present term is one, leave was given to file an additional brief in this cause for the purpose of giving an opportunity for a restatement of the grounds upon which the jurisdiction of the United States court rests.

It is claimed on behalf of appellee that to enforce the collection of the taxes called for by the warrant in

the hands of the county collector of Cook County, would deprive appellee of its property without due process of law, and would constitute a denial to appellee of the equal protection of the laws, in violation of the Fourteenth Amendment to the Constitution of the United States.

The warrant in question, the enforcement of which is enjoined by the decree of the Circuit Court in this case, calls for the payment of $413,282.44, of which $393,602.31 is taxes, and $19,680.11 is penalty. (Rec., 15.) These taxes are what are called capital stock taxes, or taxes extended upon a capital stock assessment against the appellee.

Under the Revenue Law of Illinois, corporations are assessed upon all their tangible property, including moneys and credits, in the same manner and to the same extent as private individuals are taxed upon their property.

The assessment, upon which the taxes in question were extended, is made under clause 4, section 3 of chapter 120 of the Revised Statutes of Illinois. (Revised Statutes of Illinois, 1905, p. 1642), which provides that "the capital stock of all companies and associations now or hereafter created under the laws of this state * * * shall be so valued by the State Board of Equalization as to ascertain and determine respectively the fair cash value of such capital stock, including the franchise over and above the assessed value of the tangible property of such company or association. Said board shall adopt such rules and principles for ascertaining the fair cash value of such capital stock as to it may seem equitable and just, and

such rules and principles, when so adopted, if not inconsistent with this act, shall be as binding and of the same effect as if contained in this act, subject, however, to such change, alteration or amendment as may be found from time to time to be necessary by said board."

It has been held both by this court and also by the Supreme Court of Illinois that the term "capital stock," as used in this statute, represents the entire property and assets of the corporation, and that the taxes extended upon the assessment made under this clause are levied upon the property of the company, and not upon its shares of stock, or its debts. The State Board of Equalization are required by the statute to meet annually "on the first Tuesday after the 10th day of September," for the purpose of equalizing the assessments for the current year, and of assessing all property over which they have jurisdiction to make original assessments. (Revised Statutes of Illinois, 1905, p. 1707.)

In the year 1900 the State Board of Equalization convened in September, as required by the statute, and the entire proceedings of the board for that year are shown in the record in the Chicago Union Traction Company case, No. 424, pages 853 to 1042. While the Board of Equalization was in session on November 10, 1900, a petition for mandamus was filed by the State's Attorney of Sangamon County, Illinois, against the State Board of Equalization and its members, alleging that during the year 1899 the State Board of Equalization did not make any capital stock assessment against appellee and certain other corporations therein named,

and that it was the intention of the board not to make any capital stock assessments against the same corporations for the year 1900, which, it was charged, "would be and is a gross abuse by said state board and said members thereof, of their discretion and an evasion of their positive duty in the premises as contemplated by law." The petition prayed

> "For the people's writ of mandamus at the suit of the people of the State of Illinois by said E. S. Smith, State's Attorney as aforesaid, upon the relation of Catherine Goggin and Robert C. Steele, directed to said state board and to each member thereof, commanding it and then forthwith to value and assess the capital stock including the franchises, of each of said companies hereinbefore named in the manner provided by law, and that is, and they, said members, value the capital stock of said companies, so as to ascertain and determine respectively, as to each of said companies, the fair cash value of its capital stock, including the franchises over and above the assessed value of the tangible property of such company; and the same to be done at the present annual meeting of said state board now being held and before the final adjournment of said annual meeting.
>
> And in arriving at said valuations and assessments of the capital stock, including franchises of said companies hereinbefore named, said state board and each member thereof shall from the best information obtainable by it and them ascertain and take into consideration, among other things, as to each such corporation as the same was on the first day of April, A. D. 1900.
>
> The market value, or if no market value, then the actual value of its share of the stock and the total amount of all its indebtedness, except the indebtedness for current expenses, excluding from such expenses the amount paid for the purchase or improvement of property, and the assessed or

equalized valuation of all tangible property it owned on said April 1, 1900.

And further commanding said state board and said members thereof to direct the respective assessments so made to be certified by said auditor to the county clerk of said Cook County that the taxes for all purposes thereon may be extended by said clerk, and that a summons may issue against the said defendants according to the law, and that such further orders may be made in the premises as justice may require and to the court shall seem proper, etc." (Rec., No. 424, pp. 467-468.)

The petition made no charge of any misconduct on the part of the companies, except the failure to file certain statements with the assessors of Cook County, but alleges that in case of such failure the statute made it the duty of the assessors to make the necessary returns for each company to the state board, and that the Board of Assessors had discharged this duty, making full and adequate returns to the State Board of Equalization. (Rec., No. 424, p. 461.) It therefore appeared that the state board had before it, under and in pursuance of the statute, all the information which would have been before it if the companies had made the returns provided by law, and it is not charged, as it could not be, that the failure of the State Board of Equalization to do its duty, if it did so fail, was in any way caused by any act or failure to act on the part of the appellee or any other of the corporations mentioned in the petition for mandamus.

On the 24th day of November, 1900, while the State Board of Equalization was still in session, the members of the board filed their answer to the petition for mandamus, in effect denying the authority and

jurisdiction of the courts to control the action of the State Board of Equalization in the discharge of its duties under the statute. (Rec. No. 424, p. 469-481.) A general replication was filed to this answer.

On the 22nd day of November, 1900, the State Board of Equalization adopted rules for the assessment of capital stock of corporations, under which they eliminated the consideration of the funded debt of corporations in determining the fair cash value of their capital stock. (Rec. No. 424, p. 872.) These rules were adopted by a unanimous vote and were subsequently declared illegal by the Supreme Court of Illinois in its decision in the mandamus suit.

On the first day of December, 1900, the Committee on Assessments of capital stock of corporations, other than railroads, made a unanimous report, showing the assessments recommended by the committee against the several corporations of the state. (Rec. No. 424, 898-907.) By this report an assessment of $700,000 was recommended against the Chicago City Railway Company. (No. 48, p. 900; Rec., No. 424.)

On the same day, December 1, 1900, the Committee on Assessments of Railroad property made a unanimous report, finding that there should be no assessment upon the capital stock of any railroads of the State of Illinois. (Rec. No. 424, 908-910.)

On December 3, 1900, the reports of the two committees on railroads and the capital stock of corporations were adopted by the Board of Equalization by a unanimous vote (Rec. No. 424, 937); and on the same day the State Board of Equalization adjourned *sine die* (p. 956).

On December 19, 1900, the mandamus suit was continued on motion of the plaintiffs. Rec. No. 424, p. 481.)

In the latter part of March, 1901, the mandamus suit came on for trial without any amendment of the petition or answer, and therefore without any allegations or issue in regard to the capital stock assessments which had been made by the State Board of Equalization at its meeting in the year 1900, and on the 1st day of May, 1901, a judgment was entered in the Circuit Court in the mandamus suit in favor of the petitioners. (Rec. No. 424, p. 481-482.)

In the meanwhile, and in pursuance of the provisions of the statute, the assessment made by the State Board of Equalization upon the capital stock of appellee was certified by the proper officers to the County Clerk of Cook County, taxes extended thereon, a warrant issued for the collection thereof to the town collector of the Town of South Chicago in Cook County. (Rec., 4.)

The tax extended upon the original capital stock assessment for 1900 against appellee was $58,569, which was paid in full in due course to the town collector of the Town of South Chicago. A town collector is required by statute to proceed at once, upon receiving his warrant, to enforce the collection thereof, by a levy upon and a sale of the personal property of any person or company who shall refuse to pay personal property taxes; and on or before the 10th day of March he is required to make return, under oath, of his warrant, stating that he was unable to collect the pesronal property taxes which remain unpaid. (Secs.

155 to 169, Chap 120 of the Revised Statutes of Illinois, pp. 1667-1669.) It is admitted in the answer in this cause that the taxes were extended upon the capital stock assessment made in the year 1900, and collected by the town collector as alleged in the bill.

It is not charged either in the mandamus proceeding or in the present proceeding that appellee could in any way have avoided the payment of the taxes extended upon the first capital stock assessment by the State Board of Equalization for the year 1900. The mandamus suit was tried after the payment by appellee of the capital stock tax upon the first assessment for the year 1900, without any changes or alterations in the pleadings in the mandamus case, and without any reference therein to the capital stock assessment made by the State Board for the year 1900 against appellee. The case was tried upon a petition which alleged that it was the intention of the State Board not to assess the corporations therein named for the year 1900. None of the corporations named in the mandamus suit were made parties defendant, and no charges of fraud or misconduct was made in the mandamus case against appellee or the other corporations, except a failure to make certain returns for which the statute provided alternative returns by the assessors, which were made, and which fully supplied all the information to the State Board which the returns by the corporations would have supplied if made in full compliance with the statute.

A writ of mandamus was issued by the Circuit Court, dated May 1, 1901, which recited that the assessments made against appellee and certain other corpora-

tions in the year 1900 were unreasonable, arbitrary and fraudulent, and were in effect no assessment in law, and that "the conduct of said State Board and the members thereof, in respect thereto, as shown by the evidence, was sufficient to constitute, and did constitute, a wrongful, wilful and arbitrary failure, omission and refusal to assess the capital stock" of the corporations mentioned. The writ required the State Board of Equalization, and the members thereof, to *forthwith* convene, and proceed to *forthwith* value and assess the capital stock of the corporations named. And further required the State Board to determine respectively, as to each of said corporations, "the *fair cash value of its capital stock,* including the franchise, over and above the equalized assessed value of the tangible property of such corporation, on the 1st day of April, 1900. * * * And you are commanded to direct the respective assessments so made to be certified by the auditor of public accounts to the county clerk of Cook County, to be by him extended on the collector's books of that county, for collection, and you are ordered and directed to make return to this court on June 12, 1901, in what manner you have executed this order." (Rec. No. 424, pp. 483, 485.) An appeal was prosecuted by the State Board of Equalization to the Supreme Court of Illinois, where the judgment was affirmed.

On the 2nd day of November, 1901, the writ of mandamus issued under which the assessment now in question was made. By this writ, after reciting the judgment of the Circuit Court and the affirmance by the Supreme Court, it was ordered as follows:

> "Now, therefore, that justice may at once be done, you the said State Board of Equalization

and the members thereof, and each of you, are hereby commanded to convene at the Capitol Building in Sangamon County and State of Illinois, and there forthwith to value and assess the capital stock, including the franchises of each of said corporations and companies herein named, to wit: * * * as of the first day of April, A. D. 1900, in the manner provided by law, so as to ascertain and determine respectively as to each of said corporations, *the fair cash value of its capital stock,* including the franchise, over and above the assessed value of the tangible property of such corporation for the year 1900. And it is further ordered and commanded that in arriving at said valuations and assessments of the capital stock, including the franchises, of the corporations herein named, the State Board of Equalization, and the members thereof, and each of them, shall from the best information obtainable by it and them, ascertain and take into consideration, among other things, as to each such corporation, as the same was on the first day of April, 1900, the market value, or if no market value, then the fair cash value of its shares of stock and the total amount of all its indebtedness except the indebtedness for current expenses, excluding from such expenses the amount paid for purchase or improvement of property of said corporations, respectively, on said April 1st, 1900.

And you are further commanded to direct the respective assessments so made to be certified by the Auditor of Public Accounts to the County Clerk of Cook County, that the taxes for all purposes thereon may be extended by said Clerk for the year 1900, and you are further commanded to make return to this court on the 22nd day of November, A. D. 1901, in what manner you have complied with this order." (Rec. No. 424, pp. 174-175.)

On the 20th and 22nd days of November, 1901, the capital stock committee of the State Board made their

report of the re-assessments for the year 1900. (Rec. No. 424, pp. 1064-65-68-69.) In their report the committee state that they had ascertained and determined respectively, as to each of said corporations, the fair cash value of its capital stock, including the franchise, over and above the assessed value of the tangible property of such corporation for the year 1900. These reports were at once adopted by the State Board of Equalization.

It is alleged and admitted that in making the second assessment upon the capital stock of appellee, no account was taken and no deduction made by reason of the taxes paid by appellee upon its first capital stock assessment for the year 1900. If the amount called for by the warrant now in the hands of the collector should be collected from appellee, appellee would be compelled to pay taxes levied upon two entirely distinct and separate assessments upon its capital stock for the year 1900. For such collection there is no warrant, either in law or equity, and no claim has been made either in the printed briefs or in the oral argument that appellee can or ought to be compelled to pay the full amount called for by the warrant now in the hands of the collector, and the enforcement of which warrant is enjoined by the decree of the Circuit Court.

Appellee further contends that the claim of legality for the second assessment is based solely upon the judgment in the mandamus suit that the original capital stock assessment against it in the year 1900 was fraudulent, and in law amounted to no assessment; and that said judgment was void, and did not amount to due process of law as against appellee, for the reasons, (a) that ap-

pellee was not a party to said cause and had no opportunity to be heard in that case; (b) and for the further reason that there was no allegation in the mandamus suit and no issue of any kind joined therein touching the first capital stock assessment made in the year 1900 against appellee.

Appellee further contends that the constitution and laws of the State of Illinois require uniformity and equality in taxation, and that the assessment of its capital stock in 1901 was made in pursuance of a writ of mandamus, which required and resulted in the making of the capital stock assessment upon appellee and the other corporations named in said writ upon a totally different basis from that under which the capital stock assessment was made on all other corporations in the State of Illinois for the year 1900.

Appellee further contends that by the writ of mandamus the said State Board were required to, and did, make their assessment upon the capital stock of appellee and of the other corporations named in the writ of mandamus, upon the basis of its and their full cash value, without equalizing the same so as to cause the same to be made upon the same basis as all other property in the State of Illinois was assessed for the year 1900. A comparison of the capital stock assessment for the year 1900 upon the corporations named in the writ of mandamus with the assessments upon the railroad and other corporations for the year 1900, and also with the assessments made upon all other property in the state for that year, shows that such capital stock assessments are grossly excessive, inequitable and unjust.

BRIEF.

I.

THE CIRCUIT COURT OF THE UNITED STATES HAD JURISDICTION OF THE CAUSE UPON THE GROUND THAT THE ENFORCED COLLECTION OF THE ENTIRE AMOUNT CALLED FOR BY THE COLLECTOR'S WARRANT WOULD HAVE DEPRIVED COMPLAINANT OF ITS PROPERTY WITHOUT DUE PROCESS OF LAW AND SUCH COLLECTION WOULD HAVE CONSTITUTED A DENIAL TO APPELLEE OF THE EQUAL PROTECTION OF THE LAWS.

We claim jurisdiction over the cause in the Circuit Court upon three distinct and separate propositions:

(a) *The enforced collection of full taxes for the years* 1900 *upon the second assessment of the capital stock of appellee for the year* 1900, *without any credit or deduction, on account of the* $58,569.00 *already paid on the first assessment on said capital stock is without any warrant of law and is not attempted to be justified by counsel for appellant.*

This unlawful and illegal exaction, which would have been enforced but for the injunction granted by the Circuit Court, was made in direct pursuance and necessary result of the judgment and writ issued by the Circuit Court of Sangamon County and had the sanction of the affirmance thereof by the Supreme Court of Illinois. The writ of mandamus specifically required the State Board of Equalization to ascertain and determine "the *fair cash value* of its capital stock,

including the franchise, over and above the assessed value of the tangible property of the corporation for the year 1900."

And also "to direct the respective assessments so made to be certified by the auditor of public accounts to the County Clerk of Cook County that the taxes for all purposes theron may be extended by said clerk for the year 1900; and you are further commanded to make return to this court on the 22nd day of November, 1901, in what manner you have complied with this order. (Rec., 6 & 7.)

The mandamus required the State Board to do a specific thing which excluded the taking into account of, or making any deduction by reason of any prior assessment or tax paid by appellee. By the express terms of the mandamus this full assessment was required to be certified to the County Clerk of Cook County to the end that the taxes for all purposes thereon may be extended by said clerk for the year 1900. Neither the State Board of Equalization, the Auditor, the County Clerk or the Town Collector had any power, authority or discretion under this writ as to the assessment to be made or the taxes to be extended and collected. It follows that by the warrant issued to the Town Collector, as a necessary result of the writ of mandamus issued by the courts, appellee is required to pay $58,569.00 for which confessedly there is no warrant or authority in law or justice. The enforced collection of this illegal demand by an officer of the State under process issued under the statutes of the State in pursuance of a judgment and writ of the Circuit Court, affirmed by the Supreme Court

of the State, is a plain violation of the fourteenth amendment to the Constitution of the United States in that thereby appellee would be deprived of its property without due process of law and would be denied the equal protection of the laws.

(b) *The capital stock taxes extended upon the second assessment made in the year* 1901 *rest for their validity solely upon the adjudication in the mandamus suit that the first assessment made at the regular session of the Board was fraudulent and void, which judgment could not be made the basis of any rights as against appellee for the reasons that appellee was not a party to the suit and the question decided was not raised in the pleadings or at issue in the case.*

At the date of the trial of the mandamus case, in March, 1901, a capital stock assessment had been made by the State Board of Equalization at its regular session in 1900 against appellee. This assessment had been certified by the State Auditor to the County Clerk of Cook County; taxes had been extended upon this assessment, a warrant for their collection issued and they had in fact been collected by the Town Collector under his warrant from appellee. Appellee was not a party to the mandamus suit and *there was no allegation or issue in the mandamus suit in regard to the capital stock assessment made against appellee in the year* 1900. The judgment entered on the 1st day of May, 1901, and the mandamus then issued in pursuance of the judgment found that the capital stock assessment against appellee made in 1900 was fraudulent and void, and commanded the State Board to meet *forthwith* and pro-

ceed to assess the capital stock of appellee precisely as though no assessment had been made against appellee and to make return of its assessment so made on or before the 12th day of June, 1901. The State Board of Equalization by law has but one session in each year, beginning on the 10th day of September. The regular session for 1900 was adjourned sine die on the 3rd day of December, 1900. The regular session of the Board for the year 1901 could not begin, under the statute, until the 10th day of September, 1901. The judgment and writ of mandamus required the Board to convene in special session after the judgment in May and to make the assessment and certify it before the 10th day of June, 1901, the session being required to be held at a time not provided by law and without the giving of any notice or opportunity to be heard before the Board of Equalization. This is the judgment and writ that was before the Supreme Court of Illinois and affirmed by it. The fact that the State Board was in its annual session when it made the reassessment, does not affect or alter the character of the act or the authority under which the reassessment was made. The Supreme Court of Illinois found that the original judgment and writ were right and should be carried into effect. The State Board had no authority under the statute, after making its assessment in 1901, against appellee, and adjourning, to subsequently meet at a time not fixed by law and without any notice make an entirely new and independent second assessment upon appellee's capital stock, entirely ignoring its original assessment and the taxes extended and collected thereon. It is clear that the reassessment in 1901 rests for its validity and legality solely upon the judgment

of the court that the first assessment made by the State Board was fraudulent and void. A judgment rendered in a case to which appellee was not a party and upon an issue in regard to which there were no allegations in the pleadings, certainly can have no binding force or validity and to take from appellee its property upon such a judgment we claim would be to deprive it of its property without due process of law.

(c) *The corporations named in the mandamus suit were subjected under the order of the Supreme Court of Illinois to a capital stock assessment made under a different rule from that under which all other corporations in the State of Illinois were assessed upon their capital stock for the year* 1900, *whereby their capital stock assessments were disproportionately increased over the capital stock assessments upon other corporations in the State for the year* 1900.

The complaint made is not of an accidental or even intentional over-assessment of a particular corporation or of a few corporations, but the assessment by the State Board by direction of the Supreme Court of Illinois of these particular corporations upon their capital stock, upon a different basis and by a different rule from that which was applied by the State Board for the same year in its assessment of the capital stock of all other corporations in the State. While it is admitted that the courts will not grant relief upon the mere ground of overvaluation by an assessor, the rule is otherwise where the overassessment is intentional and the result of the adoption of a different rule in the assessment

of the property of the parties objecting from that adopted and applied in practice in the assessment of other property generally. The over-assessment in this case falls clearly within the distinction. The State Board of Equalization formally adopted rules in the year 1900 under which it made its assessment upon the capital stock of all corporations in the State. These rules are set forth on page 10 of the record and exclude the consideration of the bonded debt of a corporation in determining the value of its capital stock. These rules were held illegal by the Supreme Court of Illinois but they were the rules formally adopted and under which all the assessments upon the capital stock of corporations were made by the State Board in the year 1900. The result of the adoption of these rules, and of their application, was that no capital stock assessment whatever was made against any railroad company in the State of Illinois for the year 1900. The report of the Committee on Railroads, which was adopted by the Board, will be found in the record (No. 424) page 908 and following which is in part as follaws:

> "Your committee finds that the assessment of tangible property of the following railroad companies leaves nothing to be assessed as capital stock."

Then follows a list of all the railroad companies in the State of Illinois.

Under these rules the assessment of the capital stock of all the corporations in the State of Illinois amounted only to $4,808,630.00 (lower right hand figures, Rec. 424, page 907) of which amount $700,000.00 was assessed upon appellee in this case, being the largest

capital stock assessment made upon any corporation in the State of Illinois for the year 1900.

The Supreme Court of Illinois in its opinion of the mandamus case held that the rules adopted and applied by the State Board for the year 1900 were illegal and affirmed a judgment directing a capital stock assessment to be made against a few specified corporations, including appellee, upon an entirely different basis, resulting in a disproportionate, unjust and excessive capital stock assessment upon appellee. Our contention is that this mandamus issued by the courts, requiring the capital stock assessment upon appellee to be made upon a substantially and fundamentally different basis from that upon which the capital stock assessments for that year was made upon all other corporations in the State of Illinois, for the same year, deprived appellee of the equal protection of the laws.

The City of Chicago, for example, is required by its charter to make appropriations of specific sums in each year for its current expenses. It levies taxes by certifying the amount of these appropriations to the County Clerk, by whom they are extended upon the assessment warrants. If the other corporations in the State had been assessed upon their capital stock under the same rules which the Supreme Court required to be applied to appellee the taxes extended upon the capital stock of appellee would have been greatly diminished. The court had no constitutional right to enter a judgment requiring appellee to be assessed upon its capital stock upon a different basis from that applied to other corporations in the State.

II.

THE REASSESSMENT OF THE CAPITAL STOCK OF APPELLEE IN 1901 FOR THE YEAR 1900, WAS GROSSLY EXCESSIVE AND WAS NOT EQUALIZED BY THE STATE BOARD OF EQUALIZATION, SO AS TO BE MADE UPON THE SAME BASIS AS THE ASSESSMENT UPON ALL OTHER PROPERTY IN THE STATE OF ILLINOIS.

If the reassessment of the capital stock of appellee should be held void upon the grounds stated under points (b) or (c) above, the discussion of the proposition now under consideration will be unnecessary, as in such case the taxes and the collection warrant is void, and for reasons hereinafter stated no additional tax should be required to be paid as a condition of granting appellee relief. If, however, this court should hold that the Circuit Court had jurisdiction only upon the grounds stated above under (a), namely, that the warrant calls for the payment of $58,569, the amount of the first tax paid, without warrant of law, then it might be necessary to consider whether the residue of the tax called for by the warrant was open to any legal objection. In such case the court, having acquired jurisdiction to enjoin the collection of the amount of the tax paid upon the first assessment, would have jurisdiction to consider and pass upon all the grounds of relief set up in the bill against the taxes called for by the warrant in question. It must be conceded that under the constitution and laws of the State of Illinois every person and corporation is entitled to have his or its taxes extended upon an assessment made upon the same basis as that upon which

all other property in the state is taxed. Equality is the requirement of the constitution, and applies to all assessing bodies even although they act under a statute requiring the assessment to be made at the fair cash value. This is the settled law in the State of Illinois.

C. & A. R. R. Co. v. *Board of Supervisors of Livingston Co.*, 68 Ill., 458.

Darling v. *Gunn*, 50 Ill., 424.

C. & N. W. R. R. Co. v. *Board of Supervisors of Boone County*, 44 Ill., 240.

In this case the writ of mandamus in specific terms required the Board to assess the capital stock of these corporations at *the fair cash value*, without any reference or qualification as to the basis upon which all other property of the state had been assessed for the year in question. The assessment was made in pursuance of this writ, under conditions which precluded the possibility of the members of the Board taking any chances of varying from the specific directions contained in the writ. They had been found guilty of wilful and fraudulent conduct by the highest court of the state. They were acting in pursuance of the writ issued by the Circuit Court, which contained specific directions, and required a return by the Board of the manner in which they had executed the duty enjoined by the writ. At the date when the assessment was made the rules adopted by the Board for its guidance in the assessment of capital stock had been declared null and void, and no new rules had been adopted. At the same session and subsequent to the making of the reassessment the Board adopted rules for the assess-

ment of capital stock of corporations, which, after providing the means of ascertaining the fair cash value of the capital stock of corporations, provided that "said State Board of Equalization shall then equalize said amount so obtained, so that said companies or associations shall be assessed as near as practicable upon a uniform basis with other property throughout the state." (Rec. No. 424, p. 1074.) These rules were approved by the Attorney General of the State, and the assessment of the capital stock of corporations has ever since been made under these rules. Under these rules a capital stock assessment was made by the same Board that made the reassessment, at the same session, against the corporations named in the mandamus suit. The two sets of assessments upon the capital stock of these corporations are shown upon page 13 of the record in this case (No. 426). The assessment made for the year 1901 under the rules providing for equalization, are approximately one half of those made against the capital stock of the same corporations, by the same Board, for the year 1900.

The smaller assessment of the capital stock of appellee and the other corporations for 1901 did not arise out of the property of the state being generally assessed on a lower basis for the year 1901, for it is affirmatively shown that both the property of the state and the property in Cook County was assessed higher in the year 1901 and also in the year 1899 than it was in the year 1900. Figures for these assessments are shown upon pages 12 and 13 of the Record in 426, and also in the proceedings of the State Board of Equalization in the Record in 424. A comparison with

some other figures shown in the Record are convincing as to the inequality, injustice and unfairness of the reassessment for the year 1900 of appellee and the other corporations named in the mandamus suit.

The reassessment upon the capital stock of the street railway companies in the City of Chicago for the year 1900 was over $20,500,000. (Rec. No. 424, pp. 1065-1069.) The total original capital stock assessment upon all corporations in the State of Illinois for the year 1900 was $4,808,630. (Rec. No. 424, p. 907.) Of this amount over $2,000,000 were assessed upon the corporations named in the mandamus proceedings, leaving a total capital stock assessment on all other corporations in Illinois, for the year 1900 of less than $3,000,000. The total capital stock assessment upon all corporations, other than railroads, for the year 1901 was $20,477,943. (Rec. No. 424, p. 1139.) This is less than two-thirds of the amount of the reassessment against the corporations named in the writ of mandamus for the year 1900. The total assessment of all railroad property in Cook County, for the year 1900, including the elevated railroads, all the steam railroads, with their equipment, stations, right of way and depots, was $18,729,090, (Rec. No. 424, p. 1017), an amount less than the reassessment for the same year upon the franchise rights of the street railway companies in the City of Chicago. The total assessment of all railroad property in the State of Illinois for the year 1900 was $80,627,321. (Rec. No. 424, p. 1036.) This is less than four times the amount of the reassessment upon the rights of the street railway companies in the streets of Chicago. The total

equalized assessed value of the personal property in Cook County for 1900 was $60,161,319. (Rec. No. 424, p. 896.) This amount is less than double the reassessment upon capital stock of the corporations named in the mandamus proceeding, and less than three times the amount of such reassessment upon the street railway companies in the City of Chicago alone. This assessment of $60,000,000 includes all the banks, all credits, merchandise, bonds, stocks and personal property of a city of nearly two millions of population. The reassessment of the capital stock of the street railway companies in the City of Chicago was more than one-third of the equalized assessment of the personal property in Cook County for 1900. In 1901 under action by the same Board of Equalization the capital stock assessment upon the same companies was only about one-ninth of the assessment upon the personal property in Cook County. For assessed value of personal property in Cook County 1901, (see Record No. 424, p. 1103).

These discrepancies in assessments made by the same Board, at the same session, without any substantial change in conditions, lead inevitably to the conclusion that either the reassessment for 1900 was not made intelligently and upon a fair basis, or that the assessment of the same companies for the year 1901 was fatally wrong. The assessment of these companies for the year 1901 was made after rules were adopted providing for the equalization of the capital stock of the assessment for the year 1901 with other property in the state. No attempt has ever been made by any party either to question or challenge the fairness of the assessment for the year 1901, or the rule under which

they were made, and the court is entitled to presume that they are fair and reasonable. The reassessment for the year 1900 was made under specific directions from the court, which made no provision for equalization, and the inference is irresistible that the Board took no chances of deviating in any respect from the specific requirements of the mandamus writ. The assessments against these corporations were not equalized, and were not made on the same basis as the assessment of all other property in the State of Illinois for the same year. There is specific testimony in the record that the State Board did not undertake to equalize the reassessment with the assessment upon other property of the state for the year 1900. The admissibility of this testimony is questioned, and the subject has been fully discussed in other briefs.

III.

THE CLAIM THAT RELIEF SHOULD HAVE BEEN DENIED ON THE GROUND THAT APPELLEE HAD AN ADEQUATE REMEDY AT LAW IS NOT WELL FOUNDED.

This claim is made for the first time in this court and comes too late.

Reynes v. *Dumont,* 130 U. S., 354.
Kilbourn v. *Sunderland,* id., 505.

In the cases cited to the contrary the point was made promptly, and in addition the statutes of Tennessee, where two of the cases arose, specifically provided an adequate remedy at law and made it exclusive.

In the case at bar grounds of equitable jurisdiction

are set up in the bill in a multiplicity of suits and the inability to recover from the State. In addition the statute and practice of the State of Illinois provides no remedy at law. It has been repeatedly held by the highest court in the State that where the tax is illegal the remedy is in equity.

Huling v. *Ehrich*, 183 Ill., 315.
Kimball v. *Merchants Loan & Trust Co.*, 89 Ill., 611-13.
Weber v. *Baird*, 208 Ill., 209.
Darling v. *Gunn*, 50 Ill., 424.

IV.

THE CONTENTION THAT RELIEF SHOULD NOT HAVE BEEN GRANTED ON ACCOUNT OF THE FAILURE OF COMPLAINANT TO MAKE A PROPER TENDER OF THE AMOUNT DUE AND THAT THE COURT DID NOT REQUIRE A SUFFICIENT PAYMENT AS THE CONDITION OF GRANTING RELIEF IS NOT WELL TAKEN.

Fargo v. *Hart*, 193 U. S., 490.

Appellee has already paid over $192,000.00 taxes upon its capital stock for the year 1900, an amount in excess of any sum which could be justly charged against it for that year.

ARGUMENT.

It was conceded upon the oral argument, and is not denied in the printed briefs, that the warrant in the hands of the collector calls for the payment of at least $58,569.00, for which there is no legal warrant or claim. If the warrant is enforced and the full amount collected, capital stock taxes will have been collected from appellee upon two entirely distinct and independent assessments upon its capital stock for the same year. This confessedly and clearly would be in violation of the Constitution and laws of the State of Illinois. Appellee was entitled to relief against such collection. The question is, would appellee, by its collection, be deprived of its property by the State without due process of law or be denied the equal protection of the laws? There can be no question that appellee would be deprived of its property by the collection of these double taxes; neither can there be any doubt that it would be deprived of its property by the State within the meaning of the fourteenth amendment to the Constitution of the United States. The State Board, in levying the second assessment upon the capital stock, without taking into account its previous assessment, was only complying with the specific command of the writ of mandamus issued in pursuance of the decision of the Supreme Court of the State of Illinois. The assessment being made and certified by the State Auditor, all the other steps, including the extension and collection of the taxes, followed as a matter of necessity under the statutes of the

State. The entire proceeding rests upon and proceeded from the judgment and writ of the Circuit Court, which were confirmed by the Supreme Court of the State of Illinois. If the taxes are collected the property of appellee will be taken from it by a public officer acting under and in pursuance of the statutes of the State of Illinois in a proceeding resting for its foundation upon the judgment of the Supreme Court of the State of Illinois. It seems clear that property so taken from appellee will be wrongfully taken, without authority of law, in pursuance of a judgment and decision of the Supreme Court of the State of Illinois.

There is no controversy that to the extent above stated the taxes would be wrongfully collected from appellee and without legal right.

In discussing what constitutes a violation of the fourteenth amendment to the Constitution this court, in the case of *Chicago, Burlington & Quincy Railroad* v. *Chicago*, 166 U. S., 233, 234, this court said:

> "But it must be observed that the prohibitions of the amendment refer to all the instrumentalities of the State, to its legislative, executive and judicial authorities, and, therefore, whoever, by virtue of public position under a state government deprives another of any right protected by that amendment against deprivation by the State, 'violates the constitutional inhibition; and as he acts in the name and for the State, and is clothed with the State's power, his act is that of the State.' This must be so, or, as we have often said, the constitutional prohibition has no meaning, and 'the State has clothed one of its agents with power to annul or evade it.' *Ex parte Virginia*, 100 U. S., 339, 346-347; *Neal* v. *Delaware*, 103 U. S., 370; *Yick Wo* v. *Hopkins*, 118 U. S., 356; *Gibson* v. *Miss-*

issippi, 162 U. S., 565. These principles were enforced in the recent case of *Scott* v. *McNeal,* 154 U. S., 34, in which it was held that the prohibitions of the Fourteenth Amendment extended to 'all acts of the State, whether through its legislative, its executive or its judicial authorities;' and, consequently, it was held that a judgment of the highest court of a State, by which a purchaser at an administration sale, under an order of a probate court, of land belonging to a living person who had not been notified of the proceedings, deprived him of his property without due process of law contrary to the Fourteenth Amendment."

* * * *

"But a state may not, by any of its agencies, disregard the prohibitions of the Fourteenth Amendment. Its judicial authorities may keep within the letter of the statute prescribing forms of procedure in the courts and give the parties interested the fullest opportunity to be heard, and yet it might be that its final action would be inconsistent with that amendment. In determining what is due process of law regard must be had to substance, not to form."

In *Scott* v. *McNeil,* 154 U. S., 34, this court said:

"The Fourteenth Article of Amendment of the Constitution of the United States, after other provisions which do not touch this case, ordains, 'nor shall any State deprive any person of life, liberty, or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws.' These prohibitions extend to all acts of the State, whether through its legislative, its executive, or its judicial authorities. *Virginia* v. *Rives,* 100 U. S., 313, 318, 319; *Ex parte Virginia,* 100 U. S., 339, 346; *Neal* v. *Delaware,* 103 U. S., 370, 397. And the first one, as said by Chief Justice Waite in *United States* v. *Cruikshank,* 92 U. S., 542, 554, repeating the words of Mr. Justice Johnson in *Bank of Columbia* v. *Okely,* 4 Wheat., 235, 244, was intended 'to secure the individual

from the arbitrary exercise of the powers of government, unrestrained by the established principles of private rights and distributive justice.' " (p. 45)

* * * *

"No judgment of a court is due process of law, if rendered without jurisdiction in the court, or without notice to the party.

The words 'due process of law,' when applied to judicial proceedings, as was said by Mr. Justice Field, speaking for this court, 'mean a course of legal proceedings according to those rules and principles which have been established in our systems of jurisprudence for the protection and enforcement of private rights. To give such proceedings any validity, there must be a tribunal competent by its constitution—that is, by the law of its creation —to pass upon the subject-matter of the suit; and, if that involves merely a determination of the personal liability of the defendant, he must be brought within its jurisdiction by service of process within the State, or his voluntary appearance.' *Pennoyer* v. *Neff*, 95 U. S., 714, 733." (p. 46.)

We contend furthermore that the second assessment rests for its legality upon the binding force and effect of the adjudication that the first assessment was illegal and void. The original writ of mandamus, which was affirmed by the Supreme Court, and is the basis of the present assessment, required the Board of Equalization to meet at a time not provided by law and without giving any notice to proceed forthwith and make an assessment upon the capital stock of appellee, resting its judgment upon a finding that the assessment made by the Board at its regular session in 1900 was fraudulent and void.

The court had no jurisdiction in the mandamus proceeding to pass upon that question. There was no al-

legation or issue in the case touching that question, and appellee was not a party and had no opportunity to be heard or right to suppose that that question would be decided in that case.

The third ground upon which we claim jurisdiction is that the assessment as to the corporations named in the mandamus suit was required to be made under a different rule and upon a different basis from that under which all other corporations in the State of Illinois were assessed upon their capital stock for the year 1900.

There is no power under the Constitution of Illinois to assess particular corporations upon a different basis from other corporations of the same class. There has never been any attempt in the laws of the State of Illinois to provide that one class of corporations may be assessed according to a different rule or upon a different basis from any other class of corporations. Sections 1 and 9 of Article 9 of the Constitution of the State requires uniformity in taxation.

The State Board in the year 1900 had by formal action under the authority granted by the Revenue Laws, adopted rules governing its action in assessing all corporations for that year. These rules were adjudged illegal by the Supreme Court of Illinois. But the court, instead of requiring the State Board to reassess all corporations upon their capital stock in the year 1900, upon a proper basis, limited its action to requiring only a few corporations, named in the proceeding, to be assessed by the rule laid down by the Supreme Court in its opinion. This constituted a violation of the uniformity and equality in taxation, required by the Con-

stitution of the State of Illinois. This violation was caused directly by the order and judgment of the highest court of the State, in pursuance of which the property of appellee is sought to be taken from it. In other words, the assessment was made in violation of the Constitution of the State.

In the case of *Fargo* v. *Hart,* 193 U. S., 490, this court took jurisdiction to enjoin the collection of taxes where the assessment was made upon unconstitutional principles, the court saying that it could not fairly be treated as a mere case of overvaluation. The case at bar comes within the same principle and the court in the same case said "Under such circumstances it was impossible for the company to tender any sum because it was impossible for it to say what, if anything, it ought to pay."

In the case of *Cummings* v. *National Bank,* 101 U. S., 153, where it was shown that by custom property generally was assessed at a lower rate than an assessment made upon bank stock, the court held jurisdiction and gave relief, the court saying, in regard to such custom:

> "When it is recognized as a source of manifest injustice to a large class of property around which the Constitution of the State has thrown the protection of unformity of taxation and equality of burden, the rule must be held void, and the injustice produced under it must be remedied so far as the judicial power can give remedy."

In *Stanley* v. *Supervisors,* 121 U. S., 550, Mr. Justice Field said:

> "When the overvaluation of property has arisen from the adoption of a rule of appraisement which conflicts with a constitutional or statutory direc-

> tion, and operates unequally, not merely on a single individual, but on a large class of individuals or corporations, a party aggrieved may resort to a court of equity to restrain the exaction of the excess upon payment or tender of what is admitted to be due."

This question is very fully discussed in the opinion of Judge Taft in *Taylor* v. *Louisville & N. R. Co.*, 88 Fed. Rep., 350. Relief in equity was granted in a similar case in the Circuit Court of Appeals, sixth circuit, the opinion being rendered by Mr. Justice Day in the case of *Louisville Trust Company* v. *Stone*, 107 Fed. Rep., page 305.

We respectfully submit that the Circuit Court had jurisdiction of the cause and that its decree was right and just and should be affirmed.

JOHN P. WILSON,
Attorney for Appellee.

IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1906.

No. 426

SAMUEL B. RAYMOND, County Treasurer, etc.,
Appellants,

vs.

CHICAGO CITY RY. CO.

Appeal from the Circuit Court of the United States for the Northern District of Illinois.

Appellants' Reply Brief Filed Pursuant to Suggestions of the Court.

STATEMENT.

At the close of the oral argument of this cause, counsel for appellee asked and was granted leave to file an additional brief, dealing especially with the question of federal jurisdiction. Leave was also given to counsel for appellants to file a brief in reply to said argument.

Counsel for appellee has divided his argument into a number of subdivisions, but an examination of the brief disclosed that but two grounds of federal jurisdiction are urged.

First: Appellee was deprived of its property without due process of law.

This conclusion, appellee argues, results from the fact that the re-assessment of November 22, 1901, was illegal and void, because the State Board had exhausted its power in the making of the first assessment.

Second: It is argued that the State of Illinois denied to the appellee the equal protection of the laws.

This argument is based upon the contention that the corporations named in the mandamus suit are subjected, under the order of the Supreme Court of Illinios, to a capital stock assessment made under a different rule from that under which all other corporations in the State of Illinois were assessed upon their capital stock for the year 1900, whereby the capital stock assessments of the appellee and the other corporations named in the mandamus suit were returned at an exorbitant amount.

We will consider the arguments of appellee's counsel in the order above indicated.

I.

APPELLEE WAS NOT DEPRIVED OF ITS PROPERTY WITHOUT DUE PROCESS OF LAW.

Before considering the question presented under this subdivision, we wish to remind this court that even should we concede the above position to be well taken, the argument does not apply to the assessments made upon the capital stock and franchises of the five lessor corporations of the Chicago Union Traction Company, involved in case Number

424, nor to the assessments made upon the capital stock and franchises of the eight lessor corporations of the Chicago Consolidated Traction Company, involved in case Number 430.

The Supreme Court of Illinois pointed out in the mandamus suit (Trans., 328, Case No. 424) that the five lessor corporations of the Chicago Union Traction Company and the eight lessor corporations of the Consolidated Traction Company were not assessed at all in the assessment made December 3, 1900, by the State Board of Equalization. This finding of the Supreme Court of Illinois is sustained by the records of the State Board itself. (Trans., pp. 899 to 907, Case No. 424.)

The fair cash market value of the capital stock and the bonds of the five lessor corporations of the Chicago Union Traction Company aggregated, on April 1, 1900, over $69,000,000. (Appellants' Reply Brief in Case No. 424, page 6.) On November 22, 1901, at a regular meeting of the State Board of Equalization of the State of Illinois, duly called pursuant to law, and a quorum being present, the capital stock and franchises of the five lessor corporations of the Chicago Union Traction Company and that of the eight lessor corporations of the Consolidated Traction Company were assessed for the first time.

The Circuit Court enjoined the assessments thus duly and regularly made upon the capital stock and franchises of said thirteen corporations.

We merely wish to say at the outset that should this court reach the conclusion that the Circuit Court had jurisdiction to enjoin the collection of the assessments made by the State Board upon the cap-

ital stock and franchises of the appellee, upon the ground that the making of a second assessment and its attempted enforcement after the assessment for the year 1900 had been extended and paid, constituted an attempt to take appellee's property without due process of law, *that ground of jurisdiction fails, when applied to the thirteen corporations above referred to, and hence as to appeals Number 424 and 430 the decrees of the Circuit Court will have to be reversed and the bills of complaint dismissed as to the assessments made upon said thirteen lessor corporations of the Union Traction and the Consolidated Traction Companies, respectively.*

A.

The statutes of the State of Illinois expressly provide that if in any year or years the State Board of Equalization omits to assess any property, the State Board has the power and it is its duty to assess such property at its session during any succeeding year. The Supreme Court of Illinois, in construing this statute, held that the first assessment upon the capital stock and franchises of the appellee was fraudulent and void and that it was the duty of the State Board to make another assessment at the succeeding year. This court is concluded by the interpretation thus placed by the highest court of the state upon a state statute.

The statutes of the State of Illinois provide (Sec. 105, Chap. 120, Hurd's Revised Statutes of Illinois for 1899, page 1411) that the State Board shall assemble at the State Capital annually on the second Tuesday in the month of August and make assess-

ments on the capital stock and franchises of corporations.

Section 276 of the same chapter further provides (p. 1441):

> "If any real or personal property shall be omitted in the assessment of any year or number of years, or the tax thereon, for which such property was liable, from any cause has not been paid, or if any such property, by reason of defective description or assessment thereof, shall fail to pay taxes for any year or years, in either case the same, when discovered, shall be listed and assessed by the assessor and placed on the assessment and tax books. The arrearages of tax which might have been assessed, with ten per cent interest thereon, from the time the same ought to have been paid, shall be charged against such property by the county clerk. It shall be the duty of county clerks to add uncollected personal property tax to the tax of any subsequent year, whenever they may find the person owing such uncollected tax assessed for any subsequent year."

The re-assessments here complained of were made in strict conformity with the provisions of the above statutes, as those provisions were interpreted by the highest court of the state. On the 11th of September, 1900, the State Board met for the purpose of making assessments of the capital stock and franchises of corporations for the year 1900. (Case No. 424, Trans., 862.) The session of said Board for said year continued until December 3, 1900. (Case No. 424, Trans., 322.)

On November 10, 1900, the state's attorney of Sangamon County filed a petition for a mandamus on the relation of certain tax payers in the Circuit

Court of said county against said State Board, alleging that said Board wilfully neglected and refused, during the year 1899, to assess the capital stock and franchises of the corporations in said petition named, and that said Board claimed and pretended that it would, at its then session, similarly refuse to assess the capital stock and franchises of all the corporations now before this court in the seven cases here pending, or that said Board would assess said capital stock and franchises at a figure so low as to make said assessments fraudulent and void. On December 3, 1900, said State Board adjourned (Trans., 322, Case No. 424), and on that day said Board omitted altogether to assess the capital stock and franchises of the thirteen lessor corporations of the Union Traction Company and the Consolidated Traction Company, and made assessments upon the capital stock and franchises of the seven appellees in the cases before this court so low that said assessments were adjudged fraudulent and void by the Supreme Court of Illinois. (Trans., 328, Case No. 424.)

The fraudulent assessments levied on December 3, 1900, were certified by the State Board of Equalization to the State Auditor and by him to the County Clerk of Cook County. Taxes were duly extended by said County Clerk and during the months of January and February, 1901, said corporations paid the taxes extended pursuant to said fraudulent assessments.

Before the taxes extended pursuant to said fraudulent assessments had been paid, the appellee and the other corporations who were named in said mandamus suit, had retained an attorney for the State

Board of Equalization, and the evidence is undisputed that appellee and the corporations named in said mandamus suit paid the fees of the counsel for the State Board in that litigation and conferred with the State Board and assisted said Board in every way in seeking to maintain and defend the dishonest and fraudulent assessments made by said State Board on December 3, 1900.

That there was a conspiracy between a majority of the members of the State Board of Equalization of the State of Illinios and the managing officers and agents of the corporations named in said mandamus suit, by the terms of which the corporations were to escape the payment of their capital stock and franchise tax for the year 1900 is evidenced by many cogent facts and circumstances.

Referring to the assessment returned by the State Board of Equalization upon the capital stock and franchises of corporations for the year 1899 (Trans., 757, Case No. 424) we find: "Chicago City Railway: Assessed value of capital stock as fixed by State Board of Equalization, $1,730,889." "Equalized value of tangible property assessed by local assessors, deducted under requirements of Section 3, Revenue Law, $1,730,889," leaving no capital stock and franchise assessment against said company for said year.

Referring to the assessment of the Chicago Telephone Company (Trans., 757, Case No. 424), Peoples Gas Light and Coke Co. (Trans., 759, Case No. 424) and to the assessments of all the other appellees now before this court, we find that in every instance the assessed value of the capital stock, as fixed by the State Board, corresponded dol-

lar for dollar with the assessed value of the tangible property of said corporations. This result could hardly have been arrived at by chance or through any honest appraisement, but must have been the direct result of a criminal conspiracy between the corporations named in said mandamus suit and a majority of the members of the State Board.

The personnel of the State Board for the year 1900 was substantially the same as that of said Board for the year 1899, and the same dishonest and criminal conduct, which had been exhibited by the Board for the year 1899, was apparent in its proceedings during the year 1900.

The criminal conduct of the State Board and the corporate managers who connived with said Board during the year 1899 is made more manifest when we examine the assessments made against the capital stock and franchises of other corporations throughout the state for the same year. Corporations which had little or no property and whose stock was not quoted on the exchanges or marketable at any price, were assessed—the assessments in many instances amounting to thousands of dollars.

The criminal conduct of the State Board was especially apparent when we bear in mind that the Calumet Electric Street Railway Company (Trans., 756, Case No. 424) and the Chicago General Railway Company (Trans., 757, Case No. 424)—street railway companies that were notoriously insolvent and in receivers' hands—were the only street railway companies in Chicago that were assessed upon their capital stock and franchises for that year.

The dishonest conduct of the members of the

State Board is further evidenced by the fact that as soon as the Circuit Court of Sangamon county had lost jurisdiction over said Board in the mandamus suit, the very members who made the assessments on the capital stock and franchises of the corporations in controversy, came before the Master in the suits at bar, and there, at the request of the same corporations, impeached the very assessments which they had approved under their official oaths only a short time before.

The statutes of the State of Illinois required the appellee and the other corporations named in the mandamus suit, to file a sworn statement with the Board of Assessors, showing the market value and if no market value, the actual value of its shares of stock. The fact that none of the corporations named in the mandamus suit complied with this requirement of the law is another persuasive piece of evidence tending to show the existence of a conspiracy to defraud the state out of its revenues.

On the 1st of April, 1900, the appellee, Peoples Gas Light and Coke Company, had stocks and bonds whose market value aggregated over $64,000,000. That Company neglected to file any statement with the local assessor, but on November 17, 1900, seventeen days after the mandamus suit was instituted against the State Board, the Gas Company filed a statement, signed by L. A. Wiley, its secretary (Trans., 598, Case No. 424), which statement recited "market value of the shares of stock, not known;" "actual value, not known."

It is one of the singular things about this litigation that the same L. A. Wiley, secretary, who swore in the above statement that the market value

of the shares of stock of the Peoples Company was not known, also verified the bill of complaint filed in the Federal Circuit Court, in which it was charged that the assessment was grossly exorbitant and excessive (Trans., 34, Case No. 428). If the Peoples Company did not know on November 17, 1900, anything about the fair cash market value of its stocks and bonds, how could that Company say that the assessment made by the State Board was exorbitant and excessive? A person who admits his own inability to value property is not in a very good position to impeach the valuations placed upon that property by others.

The appellee in this case likewise neglected to file a statement before the local assessors, but it also transmitted to the State Board, after the mandamus suit had been instituted, a written statement (Trans., 599, Case No. 424), in which the Company stated that, owing to the fluctuations in the market value of stock, it was uable to place any valuations upon the stock.

An examination of the record as to all the other corporations named in the mandamus suit discloses that each and every one of those corporations either failed altogether to make statements or furnished statements that did not give any information in reference to the value of their capital stock and bonded indebtedness.

An examination of the foregoing evidence would seem to establish, beyond a reasonable doubt, the proposition that there was a well laid plan of concerted action in operation between the State Board of Equalization and the managing officers and agents of the corporations named in the mandamus suit,

which had for its object either to defeat altogether the levying of any assessment on the capital stock and franchises of said corporations or to secure the making of such assessments at such a low figure as to substantially deprive the state of any just amount of revenue.

Can parties who have been guilty of such bad faith and iniquitous conduct invoke the jurisdiction of a court of equity and secure relief against the consequences of their own iniquitous conduct?

It is plain that the making of the first grossly inadequate assessment on December 3, 1900, a few days after the commencement of the mandamus suit, and the payment of said assessment in January, 1901, by appellee, while that mandamus suit was pending and undetermined, were but part and parcel of a scheme which had for its object the defeat of the petitioners in their attempt to secure a fair and just assessment on the capital stock and franchises of said corporations.

The Supreme Court of Illinois held in the mandamus suit (Trans., 322, Case No. 424) that the assessment of the capital stock and franchises of appellee made December 3, 1900, was fraudulent and void and that it was the duty of the State Board of Equalization to assess the capital stock and franchises of the appellee as omitted property, pursuant to Section 276 of the statute above quoted.

The Supreme Court of Illinois thus stated the question which was at issue in the mandamus suit (Trans., 322):

> "The question, therefore, presented here for our determination is not whether the court has

> power to review the judgment of the State Board of Equalization in the fixing of values upon property assessed by it, but whether, when property has been *wrongfully omitted*, which is taxable or *fraudulently assessed at so low a rate as to amount, in law, to no assessment at all*, the court may compel said Board to perform its duty by assessing said property."

The Supreme Court of Illinois held that the power to make assessments of omitted property (Trans., 328, Case No. 424) was continuing in its nature and could be enforced against the successors in office of the original board, and, further (Trans., 329, Case No. 424), that it was the duty of the State Board of Equalization for the year 1901 to assess as omitted property the capital stock and franchises of the corporations named in the mandamus suit under the above section.

Counsel's statement that the Supreme Court of Illinois in effect directed the State Board of Equalization to convene in special session and make the assessment here complained of is without merit, for that question was not before the Supreme Court of Illinois. The judgment and opinion of the Supreme Court of Illinois was entered in the mandamus suit on the 24th day of October, 1901. That opinion merely held that the State Board of Equalization for the year 1901, being the successor of the Board of 1900, had the power and that the duty devolved upon it, of assessing omitted property, and that such a duty could be compelled by mandamus and that the fraudulent assessments made against the corporations named in the mandamus suit amounted in law to no assessments.

The State Board of Equalization met on Septem-

ber 17, 1901 (Trans., 1049, Case No. 424), and was in continuous session until December 20, 1901. It will be observed that the judgment of the Supreme Court of Illinois was entered while the State Board was in regular session. The writ of mandamus issued out of the State Circuit Court on the 2nd day of November, 1901, and was made returnable November 22, 1901, and the re-assessments here complained of were made on the 22nd day of November, 1901. It will thus appear that the re-assessments here complained of were made at a regular session of the State Board of Equalization of the State of Illinois, called pursuant to law; that the capital stock and franchises of the appellee and the other corporations named in the mandamus suit were then assessed as omitted property, in strict conformity to the statutes of the State of Illinois, as those statutes had been interpreted by the highest court of the state. This constituted due process of law within the meaning of the Federal Constitution.

Where the sessions of a State Board of Equalization are public and are held at a time and place fixed by law, it is the duty of all persons to be present and take notice of the Board's action. (Original Brief, Case No. 424, p. 75.)

In *Lander* v. *Mercantile National Bank,* 186 U. S., 458, the State Board of Equalization of the State of Ohio made an assessment upon the shares of stock of the bank and then adjourned without fixing a date for convening. The Board then convened in special session without notice to the bank and set aside the original assessment and made a second increased assessment in lieu thereof. The contention was there made that the making of the

second assessment, without fixing the date for the meeting of the Board and without the notice and knowledge of the bank did not constitute due process of law. This court, in denying the efficacy of that contention, said (page 469):

> "We do not think the principle of those cases is affected by an adjournment of the Ohio board without fixing a date of meeting. How were the rights of the bank affected and to what inconvenience was it put? It did not appear at the first meeting of the Board. It rested on the evidence it had returned to the auditor, and it knew that the report it had made to the comptroller of the state would be before the Board, and it knew also the duties and power of the Board. The Board was a public tribunal, open to be invoked, and charged with duties, and necessarily subject to adjournments. What it had done the bank could have easily ascertained, and as easily what it contemplated doing. An inquiry would have ascertained both. By the exertion of a very trifling trouble the bank would have been informed of every meeting of the Board."

We have already pointed out that the re-assessments here complained of were made strictly in accordance to the laws of the State of Illinois, as those laws have been construed by the highest court of the state. The decisions of this court are clear, to the effect that the regularity of the procedure in the levying and collection of taxes is a question that arises under the constitution and laws of the state. So long as no right guaranteed by the Federal Constitution is infringed this court is controlled by the interpretation placed by the highest court of the state upon such statutes.

In *Baily* v. *Magwire*, 89 U. S., 215, it was contend-

ed that a tax had not been levied and extended in accordance with the laws of the State of Missouri. This court held that that was a question exclusively for the highest court of Missouri to determine, and said, concerning the decision of the Supreme Court of the state:

> "As it is the peculiar province of the highest court of a state to decide whether or not the method pursued in the assessment and collection of taxes is in conformity with the law of the state, this decision is controlling."

In *Erie Railway Co. v. Pennsylvania,* 88 U. S., 492, this court was called upon to determine whether the railway company was doing business within the State of Pennsylvania within the meaning of the taxing laws of that state. This court held that the interpretation placed by the highest court of the state upon the taxing laws of that state was controlling, and said:

> "The Supreme Court of that state has held that this 'company was doing business in the state in the sense of that act.' This construction of a state statute by the Supreme Court of the state, involving no question under the laws or Constitution of the United States, is conclusive upon us. We accept the construction of state statutes by the state courts, although we may doubt the correctness of such construction. We accept and adopt it, although we may have already accepted and adopted a different construction of a similar statute of another state, in deference to the Supreme Court of that state. *Randall* v. *Brigham,* 7 Wall., 530 [74 U. S. XIX., 285]; *Williams* v. *Kirtland,* 13 Wall., 306 [80 U. S. XX., 683]; *Tioga R. R. Co.* v. *Blossberg R. R. Co.,* [*ante,* 331]."

B.

We have already pointed out that under the decisions of the Supreme Court of Illinois, the first assessment made on December 3, 1900, was null and void, and that the re-assessment made on November 22, 1901, as and for the first of April, 1900, was legal and valid. If the appellee paid the first assessment while the mandamus suit was pending and after a warrant for the collection of said assessment had been issued against it, as alleged in its bill of complaint (Trans., 4), then it is clear that said payment constituted an involuntary payment of a void tax, and the appellee would have an adequate remedy at law to recover back the amount so paid.

If appellee entered into a conspiracy to defeat the making of a just and fair assessment against it, and assisted the State Board of Equalization in procuring the making of a fraudulent assessment, and then paid that fraudulent assessment while the mandamus suit was pending, and with a full knowledge that said fraudulent assessment would ultimately be adjudged invalid by the Supreme Court of the state, the appellee ought not to be entitled to relief in a court of equity.

Should we, however, assume that the appellee and the other corporations named in the mandamus suit were free from iniquity, and that the first assessment was null and void, and that the re-assessment here complained of, made on November 22, 1901, was valid, then it is plain that appellee cannot go into a court of equity, but has a plain and adequate remedy at law.

This court has often held that where a person can

recover back an illegal tax by an action at law, no relief can be had in a court of equity.

Shelton v. *Platt,* 139 U. S., 591-595.

Allen v. *Pullman's Palace Car Co.,* 139 U. S., 658.

Pacific Express Co. v. *Seibert,* 142 U. S., 339.

Pittsburg, C. C. & St. L. R. Co. v. *Board of Public Works,* 172 U. S., 38.

The law is also well settled by the decisions of the Supreme Court of Illinois, that where a municipal or state officer demands money which he has no right to receive and a party pays such money to prevent injury to his business or property, the money may be recovered back from the state or the municipality.

In *City of Chicago* v. *Northwestern Mut. Ins. Co.,* 218 Ill., 40, certain water taxes were illegally demanded by the City of Chicago, and paid under protest. The court, in holding that an action in assumpsit would lie against the city to recover back such taxes, because the city had no right to demand payment, said:

> "It is the well settled rule of this state that where one is compelled to make payment of money which the party demanding has no legal right to receive, in order to prevent injury to his person, business or property, such payment is, in law, made under duress, and may be recovered from the party receiving it; and it makes no difference that the payment was made with full knowledge of all the facts, provided it was made under duress."

In *Cook County* v. *Fairbank,* 222 Ill., 578, Fairbanks paid certain fees to the clerk of the Probate Court of Cook county. The statute imposing such

fees was afterwards adjudged unconstitutional by the Supreme Court of the state and that court also held that Fairbank could maintain an action in assumpsit against the county to recover back fees so illegally demanded and received.

In view of the foregoing authorities from the Supreme Court of Illinois, it is plain that if appellee was free from iniquity and laches, it could have demanded and recovered back all taxes paid under the assessment made December 3, 1900.

The appellee does not aver, in its bill of complaint, that it has ever demanded of appellant the repayment of the taxes extended pursuant to the first assessment; but, on the contrary, the appellee has always contended and now contends that the assessment which was expressly adjudged fraudulent and void by the highest court of the state, should protect the appellee from paying the second assessment, which was held legal by the decision of the same court.

Appellants have at all times been ready and willing, and now concede that they are ready and willing to give the appellee full credit for the amount paid under the first assessment of December 3, 1900, even though, as a matter of law, it is very questionable whether, in view of the dishonest and collusive conduct of the appellee and the other corporations named in the mandamus suit, they should be entitled to any relief from said payment.

C.

If the contention of appellee be sound, that the re-assessment made November 22, 1901, was void and illegal, because the State Board had exhausted its powers in making the first assessment, then appellee has no standing in a court of equity, for it could have paid the void assessment under protest and then have recovered the money back.

We have already demonstrated that if we assume that the re-assessment made November 22, 1901, was legal, and the first assessment was void and unenforceable, then appellee could have paid the valid assessment, and then have brought an action to recover back the money paid under the first assessment. Should we, however, concede the contention of counsel for appellee that after the first assessment of December 3, 1900, was made, the State Board of Equalization had exhausted its power, and that the second assessment was void and illegal, then it is plain that the bill of complaint in this case does not present any ground for equitable intervention.

It is charged in appellee's bill of complaint (Trans., 18) that a warrant is in possession of the Town Collector of the Town of South Chicago, requiring said collector to enforce the collection of the tax levied pursuant to the re-assessment complained of, and that unless payment is made by appellee said collector will make a levy upon the cars and property of appellee.

The facts then show that the appellee could pay the entire tax here in controversy under protest to the Town Collector of the Town of South Chicago,

and then bring an action at law against said collector to recover back the money. If the claim of appellee be sound, that the re-assessment complained of is void and illegal, and that the tax levied pursuant thereto is unenforceable, then it necessarily follows that the warrant of the Town Collector is equally void, and that the demand of said collector is unlawful and unauthorized. It is plain, within the authorities already quoted from the Supreme Court of Illinois, that appellee could pay the tax extended pursuant to the re-assessment complained of, under protest, to the Town Collector of the Town of South Chicago, and then recover back said money in an action at law.

The Town Collector and the sureties on his official bond would be liable for all moneys received under such an unauthorized demand. There is no claim made in the bill of complaint of appellee that the sureties on the official bond of the Town Collector are irresponsible or insolvent, or that they would not be liable for the payment of an illegal or unauthorized tax, collected by the Town Collector under circumstances alleged in appellee's bill of complaint. This court has often decided that where a tax is illegal and void, it can be paid under protest and recovered back from the collector. Hence the aggrieved party has an adequate remedy at law, and a court of equity will not assume jurisdiction.

The authorities cited by this court in support of that proposition are based upon the sound rule of public policy, that a court of equity should never interfere with the taxing machinery of a state, where the aggrieved party has an adequate remedy by an action at law.

In *Shelton* v. *Platt,* 139 U. S., 591, a bill was filed against the Comptroller of the State of Tennessee and the Sheriff of Hamilton County in said state, to enjoin the collection of a tax levied against the United States Express Company. It was there charged that the express company was engaged in interstate commerce; that the sheriff was about to seize its wagons and property and interrupt and interfere with interstate commerce; that the tax was unconstitutional and therefore illegal and void. This court there dismissed the bill of the express company upon the ground that the company had an adequate remedy at law, the remedy being by paying the illegal tax under protest and then bringing an action to recover it back. This court there said (p. 595), quoting from Cooley on Taxation:

> "When a tax is assessed as a personal charge against the party taxed, or against his personal property, it is difficult to suggest any ground of equitable jurisdiction. Presumptively the remedy at law is adequate. If the tax is illegal and the party makes payment, he is entitled to recover back the amount. The case does not differ in this regard from any other case in which a party is compelled to pay an illegal demand; the illegality alone affords no ground for equitable interference, and the proceedings to enforce the tax by distress and sale can give none, as these only constitute an ordinary trespass. To this point the decisions are numerous."

In *Allen* v. *Pullman's Palace Car Co.,* 139 U. S., 658, a bill was filed by the Pullman Company against the Comptroller of the State of Tennessee seeking to enjoin the collection of certain license fees levied pursuant to the laws of the state, which laws the

company averred to be in conflict with the Federal Constitution, and that the taxes were therefore "illegal and void." The contention that there was an adequate remedy at law was raised for the first time in the case under consideration in this court. There were elaborate allegations in reference to the irreparable injury and the interruption of the Pullman Company's business that would be occasioned by the levy upon and the sale of its property for the satisfaction of this tax. Yet this court held that payment under protest in an action at law to recover back the money constituted an adequate remedy at law.

In *Pacific Express Co.* v. *Seibert*, 142 U. S., 339, the same rule was laid down.

In *Pittsburgh, C. C. & St. L. R. Co.* v. *Board of Public Works*, 172 U. S., 38, this court said:

> "In the State Railroad Tax Cases this court, in a careful and thorough opinion delivered by Mr. Justice Miller, stated that 'it has been repeatedly denied that neither the mere illegality of the tax complained of, nor its injustice nor irregularity, of themselves, give the right to an injunction in a court of equity.' * * * This court further said, quoting from the same case: 'But we may say that, in addition to illegality, hardship or irregularity, the case must be brought within some of the recognized foundations of equitable jurisdiction; and that mere errors or excess in valuation, or hardship or injustice of the law, or any grievance which can be remedied by a suit at law, either before or after payment of taxes, will not justify a court of equity to interpose by injunction to stay collection of a tax.'"

An attempt was made to bring appellee's bill of complaint within the rule that an injunction was necessary for the purpose of preventing a multiplicity of suits, for, it is alleged (Trans., 19), that after said taxes have been collected the Town Collector is required by law to distribute said taxes to the Treasurer of the City of Chicago, the Cook County Treasurer, the Treasurer of the Sanitary District, etc. The complete answer to that proposition is that appellee is not obliged to pursue the fund into the hands of the different municipal officers of the State of Illinois. It may pay its money under protest to the Town Collector and sue him to recover back the entire sum. If the Town Collector should pay the money over to any of the officers named he would be acting at his peril and would be liable, together with the sureties on his official bond, to the appellee for the entire sum. A tax collector is always under the law required to pay the money over to somebody else, and the money is nearly always distributed among different officials charged with the administration of the revenue laws, but no case in this court has ever held that a case of equitable jurisdiction can be made out by inserting allegations of the character above set forth.

Counsel for appellee argues that the contention that appellee had a plain and adequate remedy at law comes too late, because not made in the court below, and cites in support of the proposition *Reynes* v. *Dumont,* 130 U. S., 354.

An examination of the decisions of this court will demonstrate that as applied to the cases at bar the contention is without merit.

In *Lewis* v. *Cocks,* 90 U. S., 466, a bill was filed

to set aside a judicial sale, on the ground that the judgment under which the premises were sold was null and void by reason of the non-service of process upon the defendant. This court there reversed the judgment of the Circuit Court and held, that under the above circumstances the complainant had an adequate remedy at law by an action of ejectment, and therefore a court of equity would not assume jurisdiction.

To the contention that the objection that there was a plain and adequate remedy at law should have been made in the court below, this court said:

> "In the present case the objection was not made by demurrer, plea or answer, nor was it suggested by counsel; nevertheless if it clearly exists it is the duty of the court *sua sponte* to recognize it and give it effect." (Citing authorities.)

The case of *Reynes* v. *Dumont*, 130 U. S., 354, is no authority for the proposition contended for by appellee's counsel. It was there held that where want of jurisdiction does not appear upon the face of a bill of complaint it must be availed of by plea or answer in order to make the question reviewable in this court. This court there said, quoting from *Wylie* v. *Coxe*, 56 U. S., 415:

> "It is too late to raise such an objection on the hearing in the Appellate Court, *unless the want of jurisdiction is apparent on the face of the bill.*"

Here the want of jurisdiction is apparent on the face of appellee's bill of complaint, and therefore even within the authority cited by appellee's coun-

sel it is not too late to raise the question. This court then reviewed the case of *Lewis* v. *Cocks*, 90 U. S., 466, and approved of the doctrine there laid down with reference to the question here under consideration.

In *Allen* v. *Pullman's Palace Car Company*, 139 U. S., 658, the precise question here presented was involved, and decided contrary to the contention of appellee's counsel. That was a bill filed by the Pullman Company against the Comptroller of the State of Tennessee, seeking to enjoin the collection of certain license fees levied pursuant to the laws of the state. The point that the Pullman Company had an adequate remedy at law by paying the illegal tax, and then bringing an action to recover it back, was raised for the first time in this court. This court held that the question of the adequacy of the legal remedy was timely raised, and reversed the decree of the Circuit Court and dismissed the bill of complaint for the sole reason that the Pullman Company had an adequate remedy at law.

To the contention that the point should have been raised in the court below, this court said (p. 662):

> "But in *Lewis* v. *Cocks*, 90 U. S., 23 Wall., 466, it was held that if the court, in looking at the proofs, found none of the matters which would make a proper case for equity, it would be the duty of the court to recognize the fact and give effect, though not raised by the pleadings nor suggested by counsel."

D.

Should we assume that the first assessment, made December 3, 1900, was legal and valid, and that the re-assessment complained of was utterly null and void, it is clear that no federal question is presented. Under the above circumstances, the deprivation of property would be occasioned by the illegal and unauthorized acts of state officers acting contrary to and in violation of the constitution and laws of the state. This would present no question arising under the constitution and the laws of the United States so as to give a federal court jurisdiction, independently of the diversity of the citizenship of the parties. (Original Brief, Case No. 424, pp. 46 to 73.)

II.

THE STATE OF ILLINOIS DID NOT DENY TO APPELLEE THE EQUAL PROTECTION OF THE LAWS.

It is argued that the State of Illinois denied to the appellee and the other corporations named in the mandamus suits the equal protection of the laws, in violation of the Fourteenth Amendment. This argument is based upon the contention that the corporations named in the mandamus suit were subjected, under the order of the Supreme Court of Illinois, to a capital stock assessment made under a different rule from that under which all other corporations in the state were assessed upon their capital stock, for the year 1900, whereby their capital stock assessments were disproportionately increased over the capital stock assessments made upon other corporations in the state for the year 1900.

In support of that contention counsel for Appel-

lee says (Brief, p. 18) that the State Board of Equalization adopted rules in the year 1900 for the assessment of the capital stock and franchises of corporations, and that the re-assessment complained of was made on November 22, 1901, under a different set of rules. It is true that on November 22, 1900 (Trans., 872, Case No. 424), the State Board of Equalization adopted a new set of rules for the assessment of capital stock and franchises of corporations and that the assessment was made upon the capital stock and franchises of corporations for the year 1900, under said set of rules. (Trans., 899.) The Supreme Court of Illinois held that the new set of rules were fraudulent and illegal because those rules excluded from the assessments made on the capital stock of corporations, the bonded indebtedness of corporations. In fact, that is the only point wherein counsel for appellee contends that the rules adopted on November 22, 1900, differed from the rules in force prior thereto, and which were held by the Supreme Court of Illinois to be valid.

The only claim made by counsel for appellee in reference to the under-assessment of the capital stock and franchises of corporations for the year 1900 is:

First. That under the rules adopted November 22, 1900, the State Board excluded the bonded indebtedness of railroad companies, and in that way valued the capital stock and franchises of railroads at so low a rate that there was nothing to assess, after deducting the tangible property.

Second. That the State Board likewise excluded the bonded indebtedness of all corporations liable to a capital stock and franchise assessment, under par-

agraph 4, Section 3, Chapter 120, Hurd's Revised Statutes of Illinois, 1899, and in that way the State Board made assessments on the capital stock and franchises of said corporations at a lower rate than the assessments that were made against the appellee and the other corporations named in the mandamus suit.

The above facts, it is claimed, show that appellee and the corporations named in the mandamus suit were denied the equal protection of the laws, in violation of the Fourteenth Amendment of the Federal Constitution. Counsel's contention is untenable for the following reasons:

A. There is no evidence in this record that either the railroad corporations or the other corporations liable to a capital stock and franchise assessments, under the laws of the State of Illinois, had any bonded indebtednesses during the year 1900; and no evidence as to the fair cash market value of any alleged bonded indebtednesses of such corporations. Nor is there any evidence that after deducting the assessed value of the tangible property of said railroads and other corporations from the assessed value of their bonded indebtedness and capital stock, there remained any amount to be assessed as capital stock over and above the amount returned by the State Board. The official returns of the taxing officers of the state cannot be impeached on such indefinite conjecture, unaccompanied by any tangible proof.

Counsel for appellee calls attention to the fact that the State board of Equalization passed a resolution during the year 1900, to the following effect:

> "Your committee finds that the assessment of the tangible property of the following railroad

companies leaves nothing to be assessed as capital stock."

Then follows a list of said railroads. Counsel would have this court assume that after deducting from the fair cash value of the capital stock and bonded indebtedness of said railroads the assessed value of their tangible property, there remained a surplus to be assessed as the capital stock of said railroads, and that the State Board of Equalization, in violation of its duty, failed to make such an assessment.

The difficulty with counsel's argument is that there is no evidence in this record that the railroad companies in the state of Illinois had any bonded indebtedness during the year 1900, and no evidence as to the fair cash market value of such bonded indebtedness, and no evidence as to the amount of the capital stock of said railroads, nor as to the fair cash market value of said capital stock.

The property of steam railroads within the state of Illinois is assessed in a different manner, and according to a different scheme than is the property of all other corporations. The assessing officers of the state are required to determine, for assessing purposes (Sec. 41, Chap. 120, Hurd's Rev. Stat. of Ill., 1899) the value of the right of way, all main and all side and second tracks and (Sec. 42) these properties, including the superstructures, stations and improvements upon such right of way, are held to be real estate, and are denominated "railroad tracks." Such railroad tracks (Sec. 43) are listed and taxed in the several counties, towns and villages in the proportion that the length of the main tracks in such

municipalities bears to the whole length of the road in the state. The movable property and rolling stock of the company (Secs. 44 and 45) are denominated personal property, and are required to be assessed in the different counties, towns and villages, in the proportion that the length of the main track operated in said municipalities bears to the whole length of the road. The tools, materials and all other personal property (Sec. 46) are to be listed in the places where they may be found on the first of May of each year.

The State Board of Equalization is required (Sec. 109) to assess the railroad tracks and rolling stock of said companies. The law then provides that the aggregate assessed value of the tangible property of said railroads shall be deducted from the fair cash market value of the capital stock and bonded indebtedness of said railroads (excluding indebtedness for current expenses), and the remainder shall be assessed as capital stock of said railroad.

It will be noted that the foregoing scheme of taxation is exceedingly complicated, and requires calculations to be made from many items. The State Board is called upon to determine the fair cash value of railroad track and rolling stock, and also the fair cash value of the capital stock and bonded indebtedness of said railroads. The State Board did make such a determination during the year 1900, and found that nothing was left to be assessed as capital stock. This court is asked, in the absence of all evidence on the subject, to assume, first, that the railroad corporations above named each had bonded indebtedness; and second, that such bonded indebt-

edness when added to the capital stock, exceeded the assessed value of the tangible property.

If we turn to the record in reference to the alleged discriminations claimed to have been made in the assessments of the capital stock and franchises of corporations (other than railroads) we find again that counsel's argument is based on bald assumptions, unaccompanied by any tangible evidence. An examination of the entire record in reference to the assessment of the capital stock of corporations made by the State Board for the year 1900 (Trans., 899 to 907, Case No. 424) shows that there is no evidence that any of said corporations had any bonded indebtedness, and no evidence in reference to the alleged fair cash value of such bonded indebtedness.

How can this court assume, in the absence of evidence, that such corporations had bonded indebtedness, and that such bonded indebtedness, when added to the fair cash value of the capital stock, would produce a sum which required the making of larger capital stock assessments than the ones returned by the State Board for the year 1900? Even should we assume that the assessment for the year 1900 of the corporations named in the record was made under a rule which required the bonded indebtedness of said corporations to be disregarded, the burden would still be on the appellee to show, first, that such corporations had bonded indebtedness; and second, the value of the same. In the absence of all evidence on the subject, this court cannot assume both of the above facts, for the purpose of laying a basis on which to impeach the re-assessment here complained of. An examination of the lengthy opinion of the circuit judge (Trans., Case No. 424, pages

1275 to 1287) shows that the decision of that court was not based upon any claim that corporations generally for the year 1900 were assessed by the State Board upon a different basis than was the appellee and the other corporations named in the mandamus suit. In fact, there is not an intimation or suggestion in the opinion of the Circuit Court to the effect that this record contains any evidence from which such an inference could be drawn.

B.

Even should we assume that the State Board for the year 1900, omitted to assess the bonded indebtedness of railroads and of other corporations, and by that means made assessments against such corporations much lower than the law required, the remedy of appellee and the other corporations named in the mandamus suit (who are confessedly assessed according to law) was not to enjoin their legal and valid assessments, but their remedy was to compel the State Board by mandamus to assess such bonded indebtedness as omitted property, in accordance with the statutes of the state of Illinois.

We have already pointed out that the statutes of the State of Illinois provide (Sec. 276, Chap. 120, Hurd's Rev. Stat. of Illinois for 1899, p. 1441) that if any real or personal property shall be omitted in the assessment of any year or number of years, it shall be the duty of the assessing officers of the state to assess such property for any year thereafter. The Supreme Court of Illinois, construing this statute, held that an assessment made upon property so low as to be fraudulent, was no assessment at all; and that under the above section it is the duty of the

State Board to assess such property as omitted property; and that that duty could be compelled by mandamus.

State Board of Equalization v. *People*, 191 Ill., 528 (Trans., case No. 424, page 330).

If it be true as now contended by counsel for appellee, that the State Board of Equalization in the year 1900, in violation of its duties and contrary to the laws of the State of Illinois, omitted to assess the bonded indebtedness of railroads, and for that reason came to the conclusion that no capital stock assessment should be made against said railroads, it is plain that the appellee and the other corporations named in the mandamus suit could themselves immediately after the assessment was made against them, on November 22, 1901, have made a demand upon the State Board to assess the bonded indebtedness of said railroad as omitted property. If said State Board had refused, it is plain that that duty could have been compelled by mandamus.

Again, if the contention of appellee's counsel be true, that the State Board of Equalization for the year 1900 omitted to assess the bonded indebtedness of all other corporations (except appellee and the other corporations named in the mandamus suit) then it is equally clear that the State Board could have been compelled to assess such omitted property at its session for the year 1901. Appellee, under the authority of the Supreme Court of Illinois, could even have made a demand upon the Board for the year 1902, to assess all of such omitted property, and if said Board had refused to perform its plain duty that Board could likewise have been compelled by mandamus to act.

The law is well settled by the decisions of the Supreme Court of Illinois that any citizen and tax payer who shows that he is interested in having any public official perform his duty may make a demand upon such official for the performance of that duty, and if that official refuses, such citizen and tax-payer may himself institute a mandamus suit and compel the performance of that duty.

County of Pike v. *People*, 11 Ill., 201.
Ottawa v. *People*, 48 Ill., 233, 240.
Hall v. *People*, 57 Ill., 307, 313.
People v. *Suburban R. R. Co.*, 178 Ill., 594.
State Board of Equalization v. *People*, 191 Ill., 528.

In the *County of Pike* case, *supra*, a citizen and tax payer of the county brought a mandamus suit against the county commissioners to compel those commissioners to turn over a certain sum of money which had been set apart for the improvement of the navigation of a stream within the county. The court held that the relator had sufficient interest to maintain the suit, and said:

> "Any citizen of the county, especially of the locality interested in having the improvement prosecuted, could become the relator, and obtain the mandamus."

In the *City of Ottawa* case, *supra*, it was held that a citizen and tax payer had standing to compel the City of Ottawa to maintain, repair, open and close certain bridges used within the municipality as thoroughfares.

In the *Hall* case, *supra*, it was held that a citizen and tax payer could maintain a mandamus to com-

pel the commissioner of highways of said town to open a road.

In the *Suburban Railroad Company* case, *supra*, it was held that a citizen and tax payer could maintain a mandamus, to compel a railroad company to transport passengers at the rate of fare fixed by an ordinance of said municipality.

Within all the authorities above quoted it is clear that if the State Board of Equalization during the year 1900 omitted to assess the bonded indebtedness of railroad companies and other companies, any citizen and tax payer of the State of Illinois could have made a demand at any time thereafter upon the State Board while it was in session to assess such omitted property, and if said Board had refused, that person could have compelled the Board by mandamus to do its duty. Had such a proceeding been instituted no claim could have been made by the appellee and the other corporations named in the mandamus suit in the Circuit Court of Sangamon County, that they were denied the equal protection of the laws.

It is an elementary proposition that a corporation that has a plain and adequate remedy at law in the courts of its state, by means of which it can obtain full redress, has no standing in a Federal court on the ground that it is denied the equal protection of the laws. But should we assume that the appellee and the other corporations named in the mandamus suit could, under the above circumstances, choose the forum of a Federal court in preference to a state court, they are met with another insuperable objection. Even in a Federal court the appellee and the other corporations would have to insti-

tute a mandamus suit against the State Board and compel the assessment of omitted property.

The argument of counsel for appellee amounts to this: The State Board of Equalization made an illegal and an unfair assessment against steam railroads and certain other corporations for the year 1900, in this, that said Board omitted to assess the bonded indebtedness of said corporations. The appellee and the other corporations named in the mandamus suit were properly assessed in accordance with the laws of the State of Illinois. Counsel says that by that means the corporations named in the mandamus suit would be compelled to bear more than their fair proportion of taxes for that year, and counsel says the remedy should be to enjoin the assessment against the appellee and the corporations named in the mandamus suit proportionately so as to make those assessments correspond with the other assessments that were confessedly illegal and entirely too low. The laws of the State of Illinois provide an entirely different method. Instead of reducing assessments that are legal and proper so as to correspond with those that are illegal and too low, the laws of the State of Illinois provide a means of compelling the State Board to assess omitted property. This equalizes the burdens of public taxation without disturbing assessments that are confessedly just and fair. It matters not whether the assessment is made at the same year or at succeeding years, for whenever the omitted property is assessed such an assessment necessarily decreases correspondingly the burden of taxation for that year.

Even should we concede that this does not in all

cases produce absolute equality of taxation, the law is well settled by the previous decisions of this court that uniformity and equality of taxation is not a privilege or immunity guaranteed by the Federal constitution. (Original brief, case 424, pages 39 to 46.)

The capital stock and franchise assessments made by the State Board on corporations for the year 1899 furnish a striking illustration of the point we are here contending for. We have already pointed out that during the year 1899 there was not a dollar of capital stock and franchise tax assessed against any of the corporations named in the mandamus suit. Those twenty corporations, being the seven appellees before this court and the thirteen lessor corporations of the Union Traction and the Consolidated Traction Companies, had a capital stock and bonded indebtedness valuation which exceeded the aggregate capital stock and franchise valuation of all the other Illinois corporations liable to assessment and belonging to the same class. Counsel for appellee would argue that because the twenty corporations now before this court escaped without the payment of any capital stock and franchise tax for the year 1899 therefore the remaining corporations could file a bill in equity to enjoin the collection of the capital stock and franchise taxes assessed against them, and counsel argues that the court would have to grant such an injunction, otherwise the corporations that were properly assessed on their capital stock and franchises would bear more than their just share of the burdens of taxation.

The absurdity of counsel's contention is most

glaringly apparent when applied to the capital stock and franchise valuations made by the State Board for the year 1899. We contend on the other hand that if the corporations that were assessed on their capital stock and franchises for the year 1899 wanted to equalize the burdens of public taxation, they should institute a mandamus proceeding against the State Board and compel that Board to assess the capital stock and franchises of corporations which were omitted for that year.

C.

Even should we concede that the appellee and the corporations named in the mandamus suit were taxed upon their capital stock and franchises at a higher rate and under different rules than were all other corporations for the year 1900, such acts by the State Board do not infringe any right or privilege guaranteed by the Federal Constitution.

The precise question here presented was before this court and determined adversely to the contention of appellees' counsel in the recent case of *State of Missouri* v. *Dockery*, 191 U. S., 165.

There a writ of error was sued out of this court to review a judgment of the Supreme Court of Missouri which judgment affirmed a judgment of the state Circuit Court quashing an alternative writ of mandamus directed to the State Board of Equalization.

The petition there alleged that the Board

> "instead of assessing the total actual cash value of taxable property of certain railroad, bridge, telephone, telegraph, and express companies, made pretended, fraudulent, inadequate, and

> not uniform assessments upon such property, at valuations varying from about a quarter to forty-eight per cent of the actual value, except that of the express companies, which they did not assess at all."

It will be observed that the action of the State Board of Equalization of the State of Missouri, in fraudulently undervaluing the property of a large number of corporations, and in omitting altogether to assess others, destroyed all equality and uniformity in the taxing system of the st and compelled the plaintiff in error there to p.. an unjust burden of taxation and a much greater amount than he would have been compelled to pay had the Board performed its duty.

This court, after pointing out that the above case did not raise a Federal question under the fourteenth amendment, said (p. 171):

> "Furthermore, if the state could grant a total exemption it could grant a partial exemption, and if it had done so, *de facto*, through its officers, the petitioner cannot come here on an allegation that the officers acted as they did without the authority of the state. That, again, is for the state court to decide. The petitioner has no case under the Constitution of the United States, and nothing else is open. This is a writ of error to a state court, so that questions under the State Constitution and laws cannot be considered, as they might be on error to a subordinate court of the United States."

In *Coulter* v. *Louisville & N. R. Co.*, 196 U. S., 597, a bill was filed seeking to enjoin the collection of a capital stock and franchise tax levied pursuant

to an assessment made by the State Board of Equalization of the State of Kentucky.

It was there alleged, as is claimed in the case at bar, that the property of the complaining railroad company was assessed at its full cash value while the property of other persons and corporations througout the state were assessed at a sum not exceeding seventy per cent of their cash value.

This court there held that such an assessment did not infringe any right guaranteed by the fourteenth amendment, and said:

> "If it be a fact that the franchise of a Kentucky corporation is taxed at a different rate from the tangible property in the state, there can be no question that the state had power to tax it at a different rate, so far as the Constitution of the United States is concerned. (Citing authorities.) It is doubtful, at least, if any further question should have been asked in this case. *Missouri* v. *Dockery*, 191 U. S., 165."

This court, after pointing out that appellee's bill of complaint had not been established by a preponderance of evidence, said (p. 610):

> "Finally, recalling once more that we are dealing with a case that properly was not cognizable in the Circuit Court, we are of opinion that the bill must be dismissed."

Counsel for appellee says that a certain amount of money was required to be raised by taxation in the state of Kentucky for the year 1900 and that the State Board by assessing the capital stock and franchises of appellee at a higher proportionate amount than other corporations were assessed on their capital stock and franchises for the same year, com-

pelled the appellee and said corporations to pay more than their just share of taxes. Such a result always follows where property is omitted or assessed at a lower proportionate amount than the law requires. In all such cases the property which is assessed at its full valuation is compelled to pay a greater amount of taxes than it would if all the other property had been assessed at the same proportionate amount. That was the condition of affairs presented in the *Dockery* and *Coulter* cases, *supra,* and yet it was held by this court that that fact did not present any question arising under the fourteenth amendment of the Federal Constitution.

D.

The tax here sought to be enjoined was a franchise tax levied upon corporations created and organized under the laws of the state of Illinois. A state may levy a franchise tax to any amount upon a domestic corporation not engaged in interstate commerce, and neither the extortionate amount of such a tax, or its inequality presents any question arising under the Constitution of the United States.

The appellee and all the other corporations named in the mandamus suit are domestic corporations organized and existing under the laws of the state of Illinois. None of them is engaged in interstate commerce, but they are all doing a domestic business and that entirely within the state of Illinois. It is a familiar rule of law that a domestic corporation not engaged in interstate commerce owes its right to exist entirely to the laws of the state under which it is organized. That state may impose such terms and conditions upon the right of the corporation to

do business within its borders as it sees fit. It may tax the corporation for the privilege of doing business within its border in any amount that it sees fit, without running counter to any provision of the Federal Constitution. It is equally elementary that the state may discriminate against domestic corporations not engaged in interstate commerce and exempt some of such corporations from a franchise tax and impose a tax upon others without infringing any right or privilege guaranteed by the Federal Constitution.

The above propositions have been firmly settled by a long line of decisions of this court.

Hamilton Manufacturing Company v. *Massachusetts,* 73 U. S., 632.

Provident Sav. Inst. v. *Massachusetts,* 73 U. S., 611.

Delaware Railroad Tax Case, 85 U. S., 206.

Kirtland v. *Hotchkiss,* 100 U. S., 491.

California v. *Central Pacific R. Co.,* 127 U. S. 1-41.

Home Insurance Co. v. *People,* 134 U. S., 594.

In the case of the *Hamilton Manufacturing Company* v. *Massachusetts, supra,* an arbitrary tax of one and one-sixth per cent upon the excess of the cash market value of the capital stock of the company above the value of its tangible property as returned by the local assessors was sustained. This court held that such a tax upon the capital stock of a corporation could be exacted by the state without any reference to the value of the company's property and without any reference to the amount of taxes that were exacted from other persons within the

state, for this burden being in the nature of a franchise tax, its amount was limited only by the legislative discretion.

In *Provident Sav. Inst.* v. *Massachusetts, supra,* a similar arbitrary tax of three-fourths of one per cent per annum on the amount of deposits of a bank organized under the laws of the state of Massachusetts, was sustained upon the same theory.

In the *Delaware Railroad Tax Case,* 85 U. S., 206, this court said, concerning a tax similar to the one here sought to be enjoined:

> "The State may impose taxes upon the corporation as an entity existing under its laws, as well as upon the capital stock of the Corporation or its separate corporate property. And the manner in which its value shall be assessed and the rate of taxation, however arbitrary or capri[illegible]s, are mere matters of legislative discretion. It is not for us to suggest in any case that a more equitable mode of assessment or rate of taxation might be adopted than the one prescribed by the Legislature of the State; our only concern is with the validity of the tax; all else lies beyond the domain of our jurisdiction."

In *California* v. *Central Pacific R. Co.,* 127 U. S., 1, this court said (p. 41):

> "The taxation of a corporate franchise merely as such, unless pursuant to a stipulation in the original charter of the company, is the exercise of an authority somewhat arbitrary in its character. It has no limitation but the discretion of the taxing power. The value of a franchise is not measured like that of property, but may be $10,000 or $1,000,000, as the Legislature may choose. Or, without any valuation of the franchise at all, the tax may be arbitrarily laid."

In *Home Insurance Company* v. *People*, 134 U. S., 594, this court held that the capital stock and franchises of a domestic corporation could be taxed by the state of New York even though its capital stock and deposits were invested in securities that were exempt from taxation under the laws of the United States, and that such a tax could be imposed by the state at the legislative discretion. This court there said, concerning corporate franchises and the right of the state to tax them:

> "The granting of such right or privilege rests entirely in the discretion of the State, and, of course, when granted, may be accompanied with such conditions as its Legislature may judge most befitting to its interests and policy. It may require, as a condition of the grant of the franchise, and also of its continued exercise, that the corporation pay a specific sum to the state each year or month or a specific portion of its gross receipts, or of the profits of its business, or a sum to be ascertained in any convenient mode which it may prescribe. The validity of the tax can in no way be dependent upon the mode which the State may deem fit to adopt in fixing the amount for any year which it will exact for the franchise. No constitutional objection lies in the way of a legislative body prescribing any mode of measurement to determine the amount it will charge for the privileges it bestows."

The appellee was taxed in the re-assessment complained of at the rate of seven and a fraction per cent upon a one-fifth valuation of its capital stock and franchises. This would amount to a tax of less than one and one-half per cent on the full assessed value of the capital stock and franchises of the appellee after deducting the tangible property. Now,

as the capital stock of appellee was assessed by the State Board at a considerable sum less than its fair cash market value on the first of April, 1900, the tax when reduced to its ultimate analysis, amounts to a burden of about one per cent on the fair cash market value of the capital stock of appellee over and above the value of its tangible property. Taxes far in excess of this amount have repeatedly been sustained by this court, and it has been frequently and emphatically pointed out in the previous decisions of this court, that a capital stock and franchise tax in such an amount does not constitute the taking of property within the meaning of the Federal Constitution, nor does the imposition of such a burden infringe any right or privilege guaranteed by the Federal Constitution.

III.

THE CAPITAL STOCK AND FRANCHISE ASSESSMENTS MADE UPON THE CORPORATIONS NAMED IN THE MANDAMUS WERE NOT EXCESSIVE.

Counsel for appellee states in his brief (p. 23) that

> "The total original capital stock assessment upon all corporations in the State of Illinois for the year 1900 was $4,808,630."

That statement is not sustained by the record. The figure named by counsel was the aggregate of all capital stock and franchise assessments made by the State Board of Equalization for the year 1900 on certain corporations named in the table therein set forth. (Trans., 899 to 907, Case No. 424.) Many corporations possessing the greatest amount of prop-

erty and wealth are expressly excluded from said list for the statutes of Illinois provide (Par. 4, Sec. 3, Chap. 120, Hurd's Revised Statutes for 1899) that all corporations doing a banking business and all corporations organized for manufacturing purposes or for the mining of coal or for printing or publishing newspapers or improving the breeding of stock, shall be assessed by local assessors, and not by the State Board. Again, telegraph and railroad corporations are likewise excluded from said list.

It will thus appear that the list referred to is limited to certain specified corporations and an examination of the table above referred to will show that the street railroad, electric light, telephone and gas companies, comprising twenty corporations in all, whose rights are involved in the suits pending before this court, are the owners of fully four-fifths of the aggregate value of all the capital stock and franchise valuations enumerated in said tables.

Further than that, there is not the slightest evidence in this record to the effect that the capital stock and bonded indebtedness of the corporations named in said tables was assessed at a lower proportionate amount than was the capital stock and franchises of the corporations named in the mandamus suit.

It was also contended by counsel for one of the appellees in the oral argument of the tax cases here under consideration that inasmuch as the Chicago Union Traction Company was the owner of a majority of the shares of the stock of its lessor corporations, therefore the Chicago Union Traction Company should be exempt from taxation to that amount. This contention is utterly without merit.

The law is well settled by the decisions of the Supreme Court of Illinois that a corporation organized under the laws of that state has no right or power to subscribe for or purchase the stock of another corporation.

People v. *Chicago Gas Trust Company*, 130 Ill., 258.

Harding v. *American Glucose Co.*, 182 Ill., 551.

Dunbar v. *American Telephone Co.*, 224 Ill., 9, 23.

Under the laws of the State of Illinois a corporation cannot become a stockholder in another corporation. The above authorities all hold that the purchase by a corporation of the majority of the stock of another corporation for the purpose of controlling its policy constitutes an *ultra vires* act, which act may be enjoined by any stockholder.

Within the authorities above quoted it is plain that the Chicago Union Traction Company could not, by the making of an *ultra vires* and void contract for the purchase of the stock of its lessor corporations, relieve those corporations from the duty of paying the capital stock and franchise taxes lawfully levied against them by the State Board of Equalization of the State of Illinois.

IV.

THE CASES CITED BY APPELLEE'S COUNSEL IN HIS ARGUMENT (pp. 27 to 33), DO NOT SUSTAIN THE CONTENTION THAT APPELLEE'S BILL OF COMPLAINT PRESENTS A QUESTION ARISING UNDER THE FOURTEENTH AMENDMENT.

We have already pointed out (appellant's reply brief in case No. 424, pp. 34, 35), that the case of

C. B. & Q. R. R. Co. v. *Chicago,* 166 U. S., 233, and *Scott* v. *McNeil,* 154 U. S., 34, have no bearing upon the question here under consideration.

Fargo v. *Hart,* 193 U. S., 490, also cited by appellee's counsel, merely holds that where it affirmatively appears from the record that property having a permanent *situs* outside of the state has been taxed a court of equity will enjoin the collection of such a tax.

In *Cummings* v. *Merchants National Bank of Toledo,* 101 U. S., 153, the right of the National Bank to be assessed in accordance with a certain act of Congress was held to confer jurisdiction upon a Federal court because "by virtue of its organization under the Act of Congress it can go into the courts of the United States and assert that right." Moreover the laws of the State of Ohio expressly provided that a tax payer could file a bill to enjoin a tax of the character there in controversy.

Stanley v. *Supervisors,* 121 U. S., 535, also cited by appellee's counsel, was a similar case, and the jurisdiction of a Federal Circuit Court was there sustained solely for the purpose of enjoining the enforcement of a tax levied upon the shares of stock of a national bank, contrary to the Act of Congress, pursuant to which that bank was organized.

It is needless to say that none of the above cases tend to sustain the contention of appellee's counsel that the case at bar is one arising under the Constitution and the laws of the United States.

In *Taylor* v. *Louisville & N. R. Co.,* 88 Fed. Rep., 350, and *Louisville Trust Co.* v. *Stone,* 107 Fed. Rep., 305, there was no statute requiring the State Board to assess omitted property similar to the Illi-

nois statute above quoted by us, and no provision for compelling by mandamus, the making of subsequent assessments of omitted property. The cases cited are, therefore, not in point. Moreover, the above cases are directly contrary to the decisions of this court in *State of Missouri* v. *Dockery*, 191 U. S., 165, and *Coulter* v. *Louisville & N. R. Co.*, 196 U. S., 597.

V.

THE CASES HERE UNDER CONSIDERATION PRESENT NO QUESTION ARISING UNDER THE CONSTITUTION AND THE LAWS OF THE UNITED STATES.

The case made by appellee, assuming everything that counsel claims and far more than the evidence in this record shows, amounts to this: That the State Board of Equalization of the State of Illinois has imposed a franchise tax upon a domestic corporation, amounting to one per cent of the fair cash value of its stock and bonded indebtedness. This tax, it is claimed, is excessive, unequal, and unfair.

For over a century similar appeals have been made to this court. Numerous cases have been presented before this court, involving claims of a similar character, and this court has uniformly held that such contentions present no question arising under the Federal Constitution.

In *Davidson* v. *Board of Admrs. of New Orleans*, 96 U. S., 97, this court said, concerning a similar tax:

> "It may violate some provision of the *State Constitution against unequal taxation*, but the *Federal Constitution imposes no restraints on the states in that regard.*"

In *Kelley* v. *City of Pittsburgh,* 104 U. S., 78 (83), this court refused to interfere with a tax where it was conceded that it was grossly exorbitant, unfair, and unequal, and said:

> "This court cannot say in such cases, *however great the hardship or unequal the burden,* that the tax collected for such purposes is taking the property of the tax payer without due process of law."

In *Merchants and Mfrs. Nat. Bank* v. *Pennsylvania,* 167 U. S., 461, the same idea was thus expressed (p. 464):

> "This whole argument of *a right under the Federal Constitution* to challenge a tax law on the ground of inequality in the burdens resulting from the operation of the law is put at rest by the decision in *Bell's Gap R. Co.* v. *Pennsylvania,* 134 U. S., 232."

In *Kirtland* v. *Hotchkiss,* 100 U. S., 491, this court, speaking through Mr. Justice Harlan, said, concerning the complete supremacy of the taxing power of a state:

> " 'This vital power,' said this court in *Bk.* v. *Billings,* 4 Pet., 563, 'may be abused; but the Constitution of the United States was not intended to furnish the corrective for every abuse of power which may be committed by the state governments. The interest, wisdom and justice of the representative body, and its relations with its constituents, furnish the only security, when there is no express contract, against unjust and excessive taxation, as well as against unwise legislation.'
>
> "In *St. Louis* v. *Ferry Co.,* 11 Wall., 423 [78 U. S., XX., 192], and in *State Tax on Foreign Held Bonds,* 15 Wall., 300 [82 U. S., XXI., 179], the language of the court was equally emphatic.
>
> "In the last named case we said that
>
> " 'Unless restrained by provisions of the Fed-

eral Constitution, the power of the state as to the mode, form and extent of taxation is unlimited, where the subjects to which it applies are within her jurisdiction.'

"We perceive no reason to modify the principles announced in these cases or to question their soundness. They are fundamental and vital in the relations which under the Constitution of the United States exist between the Federal and State Governments. Upon their strict observance depends, in no small degree, the harmonious working of our complex system of government, Federal and State. It may, therefore, be regarded as the established doctrine of this court, that so long as the state, by its system of taxation, does not intrench upon the legitimate authority of the Union, or violate any right recognized or secured to the citizen by the Constitution of the United States, *this court, as between the citizen and his state, can afford no relief against state taxation, however unjust, oppressive or onerous.*"

We respectfully submit that there are no circumstances of hardship, oppression, or inequality, in the cases at bar, which demand that this court should now depart from the rule so frequently and emphatically expressed in the cases above quoted from.

EDWARD J. BRUNDAGE,
Corporation Counsel of the City of Chicago,
DAVID K. TONE,
Special Counsel for said City,
HARRY A. LEWIS,
County Attorney of Cook County,
WILLIAM F. STRUCKMANN AND
FRANK L. SHEPARD,
Assistant County Attorneys of said County,
WILLIAM H. STEAD,
Attorney General of the State of Illinois,
GEORGE B. GILLESPIE,
Special Assistant Attorney General of said State,
Solicitors for Appellants.

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1906.

No. ~~427~~. 118

SAMUEL B. RAYMOND, COUNTY TREASURER OF COOK COUNTY, ILLINOIS, AND *EX OFFICIO* COUNTY COLLECTOR OF COOK COUNTY, ILLINOIS; JOHN J. HANBERG, HIS SUCCESSOR AS SUCH COUNTY TREASURER AND COUNTY COLLECTOR, ET AL., APPELLANTS,

vs.

THE SOUTH CHICAGO CITY RAILWAY COMPANY.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS.

FILED OCTOBER 2, 1906.

(20,392.)

1 In the Circuit Court of the United States for the Northern District of Illinois, Eastern Division.

26169.

THE SOUTH CHICAGO CITY RAILWAY COMPANY
vs.
SAMUEL B. RAYMOND, County Treasurer, ET AL.

Mr. Charles C. Gilbert, Mr. George R. Peck, Mr. John S. Miller, and Mr. Merritt Starr, Solicitors for Complainant.
Mr. James Hamilton Lewis, Mr. Harry A. Lewis, Mr. William F. Struckman and Mr. David K. Tone, Solicitors for Defendants.

2 Pleas in the Circuit Court of the United States for the Northern District of Illinois—Eastern Division, in Chancery sitting at the United States Court room, in the City of Chicago, in said District and Division, before the Honorable Peter S. Grosscup, Circuit Judge of the United States for the Seventh Judicial Circuit, on Wednesday, the twenty-fifth day of July, being one of the days of the regular July term of said Court, in the year of our Lord one thousand nine hundred and six and of our independence the one hundred and thirty first year.

MARSHALL E. SAMPSELL, *Clerk*.

3 In the Circuit Court of the United States for the Northern District of Illinois.

26169.

THE SOUTH CHICAGO CITY RAILWAY COMPANY
vs.
JAMES BAIRD, Collector of the Town of Hyde Park, and SAMUEL B. RAYMOND, County Collector.

Be it remembered that on this day to-wit: the fifteenth day of February, 1902, come the complainant in the above entitled cause by its solicitors, Mr. Charles C. Gilbert and Messrs. Peck, Miller and Starr and filed in the clerk's office of said Court its certain Bill of Complaint in words and figures following to-wit:

4 26169.

In the Circuit Court of the United States, Northern District of Illinois, Northern Division. In Equity.

THE SOUTH CHICAGO CITY RAILWAY COMPANY, Complainant,
vs.
JAMES BAIRD, Collector of the Town of Hyde Park, and SAMUEL B. RAYMOND, County Collector, Defendants.

Bill of Complaint.

Charles C. Gilbert and Peck, Miller & Starr, Solicitors for Complainant.
Charles C. Gilbert and John S. Miller, of Counsel.

4½ UNITED STATES OF AMERICA,
Northern District of Illinois, Northern Division, ss:

To the Honorable the Judges of the Circuit Court of the United States in and for the Northern Division of the Northern District of Illinois, sitting in Chancery:

Your orator, the *South Chicago City Railway Company,* brings this, its bill of complaint, against James Baird and Samuel B. Raymond, who are made defendants hereto; and thereupon your orator complains and says:

1. That before and at the times hereinafter mentioned, your orator was, and is, a corporation organized under an Act of the General Assembly of the State of Illinois, entitled "An Act concerning Corporations," approved April 18, 1872, and the acts amendatory thereof; and owned and owns and was and is seized and possessed of a street railroad in the Town of Hyde Park, in the City of Chicago, in the County of Cook and State of Illinois, extending from at or about the corner of Sixty-third street and Madison avenue, in said town and city, and extending thence southerly and south-easterly to the southern limits of said town, city and county and to the line between the States of Illinois and Indiana; said street railroad consisting of about thirty-five miles of street railroad; and also was and is the owner and seized and pos-
5 sessed of divers cars, real estate and other personal property convenient and necessary in and about the maintenance and operation of said street railroad. That the amount of the outstanding capital stock of your orator at said times was, and is, sixteen thousand and thirty-eight (16,038) shares, of the par value or amount of one hundred dollars ($100) per share, amounting, at the face or par thereof, to the sum of one million, six hundred and three thousand, eight hundred dollars ($1,603,800). That said street railroad at said times was and is also subject to a mortgage securing the bonds of your orator to an amount in the aggregate of fifty thousand dollars ($50,000), due July 1, 1910, and bearing interest at the rate of five per cent. per annum; and also to another

mortgage securing bonds of your orator to the amount in the aggregate of one million, five hundred and thirteen thousand dollars ($1,513,000), due April 1, 1913, and bearing interest at the rate of five per cent. per annum, payable semi-annually.

2. That at each of the times hereinafter in this bill of complaint mentioned, the said County of Cook was a county under township organization in said State of Illinois and contained 125,000 and more inhabitants; and that the said defendant, James Baird, is the collector of the said Town of Hyde Park, in said County of Cook; and said defendant, Samuel B. Raymond, is County Treasurer, and *ex officio* County Collector of said County of Cook.

3. That the personal property of your orator on the first day of April, 1900, including the track and road of your orator, was listed and assessed, with reference to the ownership and value thereof on the said first day of April, 1900, by the Board of Assessors of said County of Cook, in pursuance of the Acts of the General Assembly of the said State of Illinois, respectively, entitled "An Act for the assessment of property and for the levy and collection
6 of taxes," approved March 30, 1872, and the acts amendatory thereof, and "An Act for the assessment of property and providing the means therefor, and to repeal a certain act therein named," approved February 25, 1898 at the time and in the manner provided by said acts in force on and after the first day of April, 1900; and that thereafterwards, under and in accordance with said act approved February 25, 1898, the Board of Review of said County of Cook did review the said assessment and correct the same at the time and in the manner provided by said act last named, and did complete its work and caused to be made the entries in the assessment books required to make the said assessment conform to the changes made therein by the said Board of Review, and did attach the necessary affidavit thereto and did deliver the books when so completed, as required by said act last mentioned.

4. That at the general election of the State of Illinois in November, 1896, the qualified electors of each congressional district in the said state did duly elect one of their number to serve as a member of the State Board of Equalization of said State of Illinois, to hold his office for four years and until his successor should be elected and qualified under and in pursuance of the act of the General Assembly of the State of Illinois, entitled "An Act for the assessment of property and for the levy and collection of taxes," approved March 30, 1872, and the acts amendatory thereof; and that each member of said board so elected did, before entering upon the duties of his office, take the oath prescribed by the constitution of said state, and did thereupon afterwards, on the second Tuesday in the month of August, 1897, duly assemble at the state capital, and at its first meeting did organize by selecting one of its members as chairman and appointing a secretary, and that said secretary did take the oath prescribed by the Constitution of the State of Illinois.

7 That said State Board of Equalization did duly assemble at the said capital of the State of Illinois in the City of Springfield on the first Tuesday after the tenth day (being the

eleventh day) of September, A. D. 1900, in pursuance of the act last mentioned and of the act of the General Assembly of the State of Illinois, entitled "An Act for the assessment of property and providing the means therefor, and to repeal a certain act therein named," approved April 25, 1898, and did proceed with the equalization and did equalize the assessments for the said year 1900, as provided in said act, and did also proceed with the assessment of the capital stock of each company or association at that time or theretofore incorporated and existing under the laws of said State of Illinois, in the manner provided by said statutes of Illinois then in force; and that at and during its said session of 1900, and on or about December 3, 1900, and under and in pursuance of said statutes of Illinois then in force, the capital stock of your orator and other companies and associations then or theretofore created and then existing under the laws of said state (except those required to be assessed by the local assessors as provided by said statutes), were duly assessed by said State Board of Equalization and were so valued by the said State Board of Equalization as to ascertain and determine, respectively, the fair cash value of such capital stock, including the franchise, over and above the assessed value of the tangible property of such company or association, all as provided by said statutes in that behalf. That the County Clerk of said County of Cook and the other respective county clerks of the other counties in said State of Illinois did, on or about September 10, 1900, and prior to the equalization and assessments by the said State Board of Equalization, for said year 1900, make out and transmit to the Auditor of Public Accounts of said state an abstract of the assessments of
8 property in and for their respective counties as required by the said statutes of Illinois then in force. That said state board, in making said assessments and in so valuing the property assessed by them as aforesaid, for said year 1900, did ascertain and determine, respectively, the fair cash value of such property, and did cause the same to be, and the same was, set down in one column headed "full value," and did cause one-fifth thereof to be, and the same was, ascertained and set down in another column headed "assessed value," as required by said statutes then in force. That when the said board had so completed its equalization of assessments and its assessments for the year 1900, the chairman and secretary of said board did thereupon, on or about the third day of December, A. D. 1900, certify to the Auditor of Public Accounts of said state the rates finally determined by the said State Board of Equalization to be added to or deducted from the listed or assessed valuation of each class of property in the several counties, and also the amounts assessed by said board. That upon making the said equalization and assessments for said year 1900 and completing its said work in that behalf, for the year 1900, the said State Board of Equalization did thereupon, on the third day of December, 1900, adjourn *sine die*. And that the said Auditor of Public Accounts of said state did, under his seal of office, report the action of the said State Board of Equalization to the said several county clerks, and, among others, the assessment so made of the capital stock of your orator for the

year 1900, to the County Clerk of said County of Cook, immediately after the adjournment of said board, as required by the said statutes then in force. That afterwards, and on or about January 9, 1901, the respective rates for taxes for said year 1900 were thereupon, upon the completion of the said assessment and equalization of said property for said year as aforesaid in the said State of Illinois, duly ascertained, and were duly extended by the county
9 clerks of said respective counties, upon the said assessments so made and equalized by said state board; and that the rates for and amounts of taxes for said year 1900 upon property subject to taxation in the said County of Cook were duly extended by the County Clerk of said County of Cook on the assessed valuation of property, including the capital stock of your orator, as so equalized and assessed by the said State Board of Equalization for said year 1900, as aforesaid; and that the said County Clerk of said County of Cook did thereupon on or about January 9, 1900, make out for the use of collectors of taxes, in books furnished by the said County of Cook, correct lists of taxable property as so assessed and equalized for said year 1900, with the amounts of the taxes for said year 1900, so extended and entered therein, as required by the statutes then in force, and upon said books did enter and extend the property subject to taxation, including the capital stock of your orator as assessed and equalized as aforesaid, together with the amount of the taxes for said year 1900 thereon so extended and entered therein, as required by said statutes.

That in and by said assessment so made by the said State Board of Equalization of the capital stock of your orator for said year 1900, the capital stock of your orator was so valued by the said State Board of Equalization as to ascertain and determine the fair cash value of such capital stock, including the franchise, over and above the assessed value of the tangible property of your orator; and that the said State Board of Equalization, in and by said assessment, did value and assess and determine the fair cash value of such capital stock, including the franchise, of your orator over and above the assessed value of the tangible property of your orator, at the sum of two hundred and fifty thousand dollars ($250,000), and the one-fifth thereof as the assessed value for the purposes of taxation for
10 said year 1900, at the sum of $50,000; and that when said board did as aforesaid complete its equalization of assessments for said year 1900, the chairman and secretary of said board did certify to the said auditor the said amount assessed by said state board as last mentioned; and said auditor did, under his seal of office, report the action of the said State Board of Equalization in that behalf to the County Clerk of said County of Cook, immediately after the adjournment of said board as aforesaid; and that the rates for taxes for said year 1900 were duly ascertained and the said taxes for said year 1900 extended on the said assessed valuation of the capital stock of your orator as assessed by the said State Board of Equalization as last aforesaid; the one-fifth value of the property of your orator, including the one-fifth value of the capital stock of your orator, ascertained and set down as required by the statutes then in

force, being and being taken as the assessed value for all purposes of taxation for said year 1900, as required by said statutes.

That to each collector's book so made out by the said County Clerk of the said County of Cook for the use of collectors as aforesaid, a warrant, under the hand and official seal of the clerk, was annexed, commanding the collector to collect from the persons named in said book the certain sums entered in the column of totals opposite their respective names; and that the collector's books so made, with the warrants annexed thereto as aforesaid, were delivered by the said County Clerk of the said County of Cook for the collection of taxes for the said year 1900, to the respective collectors thereto authorized by law, as required by said statutes, on or about the 10th day of January, 1901; and that among such collectors' books and warrants there was delivered to one James Baird, the collector of the said Town of Hyde Park, books made out by the said County Clerk for the use of said collector in books to be furnished by the county, containing correct lists of the taxable property as assessed and equalized for
11 said year 1900, in which were carried out and extended the rates for taxes and taxes for said year 1900, against and upon the said property, including the capital stock of your orator, and the taxes for said year 1900 against and upon the same, upon and in accordance with said equalization and assessment of property by the said State Board of Equalization for said year 1900 as aforesaid, and to said collector's books last mentioned, and to each of them, a warrant, under the hand and official seal of said County Clerk of said County of Cook, as aforesaid, was annexed, commanding said collector of said Town of Hyde Park, among other things, to collect from your orator the said sums entered as taxes for said year 1900, against your orator and upon and against the capital stock of your orator, and entered in the column of totals opposite the name of your orator in said books last mentioned.

5. That afterwards, on or about the 8th day of March, 1901, the said then collector of the said Town of Hyde Park, said James Baird, then having said collector's books and warrants last mentioned, for the collection of the said taxes against your orator, duly demanded of your orator the payment of the said taxes so levied, assessed and extended as aforesaid against your orator upon the said assessment for the said year 1900, so made and equalized as aforesaid, including the taxes upon the capital stock of your orator so assessed for said year 1900, as aforesaid; and your orator then and there, in obedience to said demand, duly paid to said then collector of said Town of Hyde Park, said James Baird, the full amount of the said taxes, including the taxes upon and against the capital stock of your orator, for the year 1900, so levied, assessed and extended as aforesaid, in full satisfaction and discharge thereof; and that thereupon the said then collector of the said Town of Hyde Park, the said James Baird, did then and there duly enter such payment by your orator in
12 his said book, and did give to your orator a receipt therefor in manner and form as required by the said statutes of said state in that behalf; and that said collector did thereupon afterwads, in the manner required by the statutes in that behalf, pay over the

amount of the said taxes for said year 1900 so paid by your orator as aforesaid, to the respective officers and authorities entitled thereto, as required by law and as directed in and by the said warrant in that behalf; and did so pay over to the County Collector of said County of Cook, said Samuel B. Raymond, the taxes so collected from your orator, payable to the state treasury and the county taxes of said County of Cook, and to the proper authorities of the Town of Hyde Park, the City of Chicago and the respective districts, boards and proper authorities in that behalf, the respective taxes so collected from your orator, as provided in and by the said statutes; and did duly make final settlements for the said respective taxes so collected from your orator for said year 1900, in the manner provided in and by said statutes; and that the respective treasurers of the State of Illinois, the County of Cook, the City of Chicago and other proper authorities of town, city, districts, park commissioners, municipalities and public agencies, for which said taxes were levied, assessed and collected, as aforesaid, for said year 1900, received the said taxes for said year 1900 so levied and assessed and exacted and collected from your orator for said year 1900, and applied the same to their respective uses and purposes for which the same were so levied and collected.

6. That at the general election in the State of Illinois in November, 1900, there was elected, as required by law, an Auditor of Public Accounts of said state, to succeed the auditor theretofore in office; and one James S. McCullough was at said election duly elected; and afterwards, on or about the first day of January, 1901, said
13 McCullough, so elected, duly qualified as such auditor.

That at the said general election in the State of Illinois in November, 1900, there was duly elected as provided by said statutes in that behalf by the qualified electors in each congressional district in said state one of their number to serve as a member of the State Board of Equalization of said state; that one George F. McKnight was elected such member of said State Board of Equalization for the First Congressional District of said state; that one Charles C. Schumacher was elected such member of said board for the Second Congressional District; that one Peter J. Schaefer was elected such member of said board for the Third Congressional District; that one Thomas F. Scully was elected such member of said board for the Fourth Congressional District; that one William Kells was elected such member of said board for the Fifth Congressional District; that one Jacob Hopkins was elected such member of said board for the Sixth Congressional District; that one James J. McComb was elected such member of said board for the Seventh Congressional District; that one Theodore S. Rogers was elected such member of said board for the Eighth Congressional District; that one Charles A. Works was elected such member of said board for the Ninth Congressional District; that one Moses Dillon was elected such member of said board for the Tenth Congressional District; that one Samuel M. Barnes was elected such member of said board for the Eleventh Congressional District; that one Frank P. Martin was elected such member of said board for the Twelfth Congressional District; that one Solon Philbrick was elected such member of said board for the Thir-

teenth Congressional District; that one W. O. Cadwallader was elected such member of said board for the Fourteenth Congressional District; that one J. S. Cruttenden was elected such member
14 of said board for the Fifteenth Congressional District; that one L. D. Hirscheimer was elected such member of said board for the Sixteenth Congressional District; that one Gaines Greene was elected such member of said board for the Seventeenth Congressional District; that one John W. Yantis was elected such member of said board for the Eighteenth Congressional District; that one Richard Cadle was elected such member of said board for the Nineteenth Congressional district; that one Allen C. Tanner was elected such member of said board for the Twentieth Congressional District; that one Joseph W. Drury was elected such member of said board for the Twenty-first Congressional District; that one William A. Wall was elected such member of said board for the Twenty-second Congressional District. That while said McKnight, Rogers, Works, Barnes, Martin, Cadwallader, Cruttenden, Hirscheimer, Cadle and Wall and said McCullough, auditor, were members of said previous State Board of Equalization, said Schumacher, Schaefer, Scully, Kells, Hopkins, McComb, Dillon, Philbrick, Greene, Yantis, Tanner and Drury were not members of said previous board, but were new members, first elected at said general election in November, 1900.

That on or about the 10th day of September, A. D. 1901, and prior to the acts of said board hereinafter mentioned, as your orator is informed and believes, the said members of the said State Board, so elected in November, 1900, respectively, took their oaths of office and duly qualified and entered upon the duties of said office as members of said State Board of Equalization; and said previous State Board of Equalization ceased to exist and the persons who were members thereof ceased longer to hold said office.

7. Upon information and belief your orator states that long after the said payment by your orator of the said taxes for the year
15 1900, as above mentioned, and long after the taxes so paid by your orator were received and used and appropriated by the said public authorities as aforesaid, and on or about the twenty-second day of November, 1901, the members of the said State Board of Equalization who were so elected at said general election in November, 1900, to hold their office for four years and until their successors should be elected and qualified assumed to assemble, and did assemble, at the state capital of said State of Illinois, in the City of Springfield, in said state, as the State Board of Equalization of said state; and that said State Board of Equalization, without any notice to or any hearing of your orator, did thereupon then and there assume to assess the capital stock of your orator for the year 1900 and for the purpose of the extension and collection of the taxes for the year 1900, which taxes had been, as aforesaid, theretofore levied, assessed and collected. And said state board at its meeting last mentioned, on or about November 22, 1901,—notwithstanding the facts above stated, that the assessment for the year 1900 of the capital stock of your orator had, at the said meeting of the State Board of Equalization for the year 1900, been assessed by said state board as

aforesaid, and in and by said assessment the capital stock of your orator had been so valued by the State Board of Equalization as to ascertain and determine the fair cash value of such capital stock, including the franchise, over and above the assessed value of the tangible property of your orator, and the full, fair cash value of such capital stock, including the franchise, over and above the assessed value of the tangible property of your orator was so valued and assessed at the sum of $250,000, and the said assessment had been certified to the County Clerk of said County of Cook and the said taxes thereon for the said year 1900 had been thereon ascertained, extended and collected and paid as aforesaid,—assumed to
16 assess again the capital stock of your orator for said year 1900 and, without any notice to or hearing of your orator, did make a pretended assessment of the capital stock of your orator for said year 1900, and in and by said pretended assessment did assume and pretend to so value the capital stock of your orator as to ascertain and determine the fair cash value of such capital stock, including the franchise, over and above the assessed value of the tangible property of your orator, for said year 1900, to be the sum of two million, one hundred and sixty-nine thousand, four hundred and thirty dollars ($2,169,430), and the one-fifth thereof as the assessed value for purposes of taxation for said year 1900 to be the sum of four hundred and thirty-three thousand, eight hundred and eighty-six dollars ($433,886); and that thereupon, when said board had completed its pretended assessment last mentioned, the chairman and secretary of said board did, on or about said 22d day of November, 1901, certify to the said auditor the said amount so assumed and pretended to be assessed by said board as last mentioned, as an assessment of the capital stock of your orator for the purposes of taxation for the year 1900; and the said auditor did thereupon, on or about said day and year last mentioned, under his seal of office, report the said action of the said State Board in that behalf to the County Clerk of said County of Cook as an assessment of the capital stock of your orator for the purposes of taxation for the year 1900. That thereupon, afterwards, on or about the 8th day of January, 1902, the said County Clerk of said County of Cook, one Philip Knopf, did assume to extend the rates for taxes for said year 1900 on the said alleged valuation of the capital stock of your orator as so assessed by the said State Board of Equalization at its said meeting on or about November 22, 1901; and did make out for the use of the collector of said Town of Hyde
17 Park, in books furnished by said County of Cook, a list of the capital stock of your orator as taxable property, as so assessed by the said State Board of Equalization at its said meeting on or about November 22, 1901; and did cause the said books to be ruled to show and cause the said books to show the said pretended valuation of the capital stock of your orator as so assessed by the said State Board of Equalization at its said meeting on or about November 22, 1901; and did extend therein upon the said pretended assessment and valuation last mentioned, upon and against the capital stock of your orator, at the said rates, the several kinds of taxes for the year 1900 to which the property of your orator had been subject, and

which had been levied, assessed, extended, collected and paid by your orator theretofore, as above mentioned; and did annex to the said collector's book a warrant, under the hand and official seal of the said county clerk, commanding the said collector to collect from your orator, who was named in said book, the sum of $33,569.40, the sum of said pretended taxes so extended and entered in the column of totals in the said collector's book last mentioned opposite the name of your orator, for the taxes for the said year 1900, so extended as last above mentioned, upon and against the capital stock of your orator; and did deliver the said book last mentioned with the said pretended warrant thereto annexed, to the said defendant, James Baird, as Collector of the said Town of Hyde Park, for the purpose of collecting from your orator the said pretended taxes for the said year 1900, last mentioned.

That the said defendant, James Baird, as such collector of the said Town of Hyde Park, after receiving the said warrant, has on or about January 21, 1902, called upon your orator and demanded payment of the said sum of $33,569.40 as the taxes for said year 1900 upon the said capital stock of your orator as so assessed or pretended
18 to be assessed by the said State Board of Equalization at its said meeting on November 22, 1901; and has threatened and stated to your orator that in case your orator shall refuse or neglected to pay said sum of $33,569.40, as the said taxes for 1900, in pursuance of said demand, it will be the duty of said defendant as such town collector to levy the same, together with the costs and charges that may accrue by distress and sale of the personal property of your orator, and that he, the said defendant, as such collector, will levy the same, together with the costs and charges that may accrue, by distress and sale of the personal property of your orator. That your orator has, as of right it might and should, refuse to pay the said sum of $33,569.40 last mentioned, and has so stated to the said defendant, and the said defendant threatens to and, unless restrained by this Honorable Court, will levy the same, together with the costs and charges that may accrue, by distress and sale of the personal property of your orator.

That your orator is, and has been since its formation, engaged in the maintenance, conduct and operation of its said street railroad and in the car-ying of persons and property thereon as a common carrier, for hire; and your orator is advised by counsel and charges the fact to be that your orator is in duty bound, under its charter, to continue in the conduct of its said business and in the use and operation of its said street railroad for the purpose aforesaid; that in the event of default by your orator in the performance by it of its said duty, and in case it should cease to maintain and operate its said railroad as aforesaid, your orator would violate its public duty and be subject to the writ of mandamus from any court of competent jurisdiction to compel it to perform its said duty, and would be subject to the forfeiture and loss of its franchises, and would also be subject to or in danger of the forfeiture and loss of divers rights,
19 licenses and privileges possessed and enjoyed by your orator

in the maintenance and operation of its said street railroad in and along the streets of said City of Chicago, under divers grants and privileges from the municipal authorities. That your orator needs and requires in and about and for the purposes of the maintenance and operation of its said business and the performance of its said duty as aforesaid, to have and possess and keep all of its personal property, including the personal property which the said defendant threatens, as aforesaid, to levy upon and sell; and that if the said defendant shall carry out his said threat and shall levy the said sum of $33,569.40, or any part thereof, upon the personal property of your orator, or any part thereof, as he threatens to do, your orator will be thereby disabled and prevented from performing its duty as aforesaid, or from maintaining or carrying on its said street railroad; and will be irreparably damaged, and the damage which will be inflicted upon your orator by such levy and sale is not capable of being measured in money or repaired by damages which your orator might recover, but will be irreparable.

That the said Samuel B. Raymond, County Collector, having like powers with said Town Collector, unless also restrained, will, as your orator charges, in like manner enforce payment of said pretended taxes and will make such levy and sale if said town collector should fail or is alone restrained herein from so doing.

8. That your orator had no notice of the said meeting of the said State Board of Equalization on or about November 22, 1901; but that said State Board of Equalization had said meeting and assumed to make, and did make, said pretended assessment for the year 1900 at said meeting on or about November 22, 1901, without any notice to your orator and without giving to your orator any opportunity to be heard with respect to said assessment last mentioned.

20 9. And your orator is advised by counsel and shows and charges that the effect of the said action of the said State Board of Equalization at its said meeting on or about November 22, 1901, and of the said Philip Knopf, County Clerk of the County of Cook, in extending the said pretended tax for the year 1900 upon the said pretended assessment of the said State Board of Equalization of the capital stock of your orator so made on or about November 22, 1901, and in issuing the said warrant to the said defendant, and of the said defendant in demanding payment of the said sum of $33,569.40, and in threatening to levy the same upon the property of your orator, and the action of the said defendant in demanding, levying and collecting the said sum, if the same be not herein enjoined and restrained, but be done, will be and is to deprive your orator of its property without due process of law, in violation of the Fourteenth Amendment to the Coustitution of the United States.

10. That the said session of the said State Board of Equalization which commenced on the first Tuesday after the 10th day of September, 1900 (being the 11th day of September, 1900), continued thence thereafterwards, with divers intervening adjournments, until December 3, 1900, when, as above mentioned, the said State Board of Equalization having completed its said work of equalizing the assessments and of making assessments for the year 1900, adjourned its

said session without day. That at said said session of 1900 last mentioned the said State Board of Equalization, in pursuance of the statutes of said state in that behalf then in force, did equalize the assessments of property in the different counties of said state made by the local assessors for the year 1900 as required by law, and did assess the railroad property and the capital stock of corporations for the year 1900, as required by law. That it so assessed and valued
21 the capital stock of three hundred and thirty-four (334) corporations in said state other than railway companies and including the capital stock of your orator; that the assessment and valuation of the capital stock of each of said 334 corporations so made as last mentioned, including your orator, was made at the same time and upon the same basis or standard of value, each with the other, according to the best judgment of the said State Board of Equalization then and there applied thereto; and that in ascertaining and fixing in said assessment so then made the fair cash value of the capital stock of your orator, so as to ascertain and determine the fair cash value of such capital stock, including the franchise, of your orator, over and above the assessed value of the tangible property of your orator, the said State Board valued the capital stock of your orator and ascertained and determined the fair cash value of such capital stock, including the franchise, of your orator, over and above the assessed value of the tangible property of your orator, upon the same and the like basis and standard of value, and none other, which was adopted in assessing the capital stock of said other 333 companies, according to the best judgment of said board then and there applied thereto. And that the said assessment and equalization of assessments so made by said State Board at its said session in the year 1900, were so made, and the property so assessed was thereby so valued, according to the judgment of the said State Board of Equalization and the members thereof, that every person and corporation should pay a tax for said year 1900 in proportion to his or its property, as required by the Constitution of the State of Illinois in that behalf.

11. That in making the said pretended assessment on or about November 22, 1901, the said State Board arbitrarily selected your orator and nineteen other corporations out of such class of 334 corporations (of which 334 corporations, 125 or thereabouts
22 are located in said County of Cook) and arbitrarily assumed to and did assess the capital stock of your orator and said other nineteen companies so selected, and none other; and in making the said pretended assessment on or about November 22, 1901, did knowingly and intentionally assess and value the capital stock of your orator, according to and upon a ratio and standard of value very much higher than, and upon information and belief your orator states several times as high as the standard of value which was adopted and observed by the said State Board at its said session in the year 1900 for the equalization and assessment of property for that year, and according to which the equalization of property and the assessment of property, including the assessment of the capital stock of corporations, for the said year 1900 (other than your orator and

said nineteen other selected companies in said pretended assessment on or about November 22, 1901), was made by the State Board of Equalization. That the said State Board, at its said session on or about November 22, 1901, did not make any assessment for said year 1900 of the capital stock of any other of said 334 corporations, or of any other corporations (except the said twenty selected corporations, including your orator),and did not change or attempt to change (otherwise than by the said pretended assessment on or about November 22, 1901, of the capital stock of said twenty selected corporations), the equalization or the assessments of property for taxation for said year 1900, as made by the said State Board at its said session in said year 1900. That of the rest of said 334 corporations, not including said twenty selected corporations, thirty-five corporations or thereabouts were street car companies owning and operating lines of street railway in said state of Illinois on the first day of April, 1900, and were on April 1, 1900, of the same class and similarly situated as your orator; and 140 companies or thereabouts were gas, electric light, water and other companies
23 engaged in the furnishing to the public of gas, electric light, water and other service, under franchises and ordinances, and were on April 1, 1900, respectively, similarly situated and circumstanced with respect to the proper assessment of their property, including their capital stock, as your orator.

12. That the said pretended assessment so made by the said State Board on or about November 22, 1901, of the capital stock of your orator, was very much more than the fair cash value of the capital stock of your orator on the first day of April, 1900; and that the said State Board of Equalization and the members thereof well knew and intended at the time of making and in making said pretended assessment last mentioned that said pretended assessment last mentioned was greatly in excess of the fair cash value of the capital stock of your orator, and greatly in excess of the valuation and assessments for the year 1900 of the capital stock of corporations other than your orator and said nineteen other selected companies.

13. That the said pretended assessment of the capital stock of your orator so made by the said State Board of Equalization on or about November 22, 1901, was made on an entirely different and much higher basis, ratio and standard of value, than and many times as high as, the basis, ratio or standard of value adopted, observed and pursued by the State Board of Equalization in the assessment of the capital stock of corporations in said assessment made by said State Board in the year 1900; and the assessment of the rest of said 334 corporations, other than said twenty selected corporations, for the year 1900, as the said assessment was made by the said State Board, stands unimpeached and unchanged, and was observed and followed in the extension of taxes against said 314 corporations of said 334 corporations other than said twenty selected corporations.

24 That the said State Board of Equalization in making the said pretended assessment of the capital stock of your orator on or about November 22, 1901, for the year 1900, well knew and

intended that said pretended assessment of the capital stock of your orator last mentioned, so made, should be and was upon said different and much higher basis, ratio and standard of value than that of the assessments of the capital stock for the year 1900 of the remaining 314 corporations of said 334 corporations, not including said twenty corporations, and intended and purposed, in making the said pretended assessment of the capital stock of your orator last mentioned, to make such gross and excessive discrimination against your orator; and that said State Board of Equalization in making said pretended assessment of the capital stock of your orator last mentioned, well knew and intended and purposed that in and by said pretended assessment last mentioned and the extension thereon of the taxes for the year 1900 against the capital stock of your orator, your orator would be compelled to pay as and for said year 1900 a tax which should not be in proportion to the value of its property, but should be discriminating and excessive and unjust; and that said alleged taxes for the year 1900, amounting to the sum of $33,569.40, so extended upon said pretended assessment last mentioned, and so demanded and sought to be collected by the said defendant, is not a tax which is in proportion to the value of your orator's property, but is much more than and many times as much as a just or uniform tax or a tax in proportion to the value of your orator's property.

14. And your orator is advised by counsel and charges and shows the fact to be that in the making of the said pretended assessment by the said State Board on or about November 22, 1901, of the capital stock of your orator for the year 1900, and in the return and certification of the same, and in the said extension of the taxes for the year 1900 against the capital stock of your orator upon and according to said pretended assessment last mentioned, and in the demand or attempted and threatened enforcement of the collection of said tax by levy upon your orator's property by the said defendant as aforesaid, your orator has been and is denied the equal protection of the laws, in violation of Section 1 of the Fourteenth Amendment to the Constitution of the United States.

15. That on or prior to the first day of April, 1900, there were created under the laws of Illinois and on the day and year last mentioned there were and are existing a large number of companies and associations which were organized for purely manufacturing purposes, and a large number of other companies and associations organized for the mining and sale of coal, and a large number of other companies and associations organized for printing, and a large number of other companies and associations organized for publishing of newspapers, and also a number of other companies and associations organized for the improving and breeding of stock; that each of which companies and associations on said first day of April, 1900, and since had and have a large amount of capital stock of great value and of a fair cash value, much larger than and in excess of the assessed value, or the fair cash value, of the tangible property of such respective companies and associations. But that the State of Illinois, by and under the said Act of the General Assembly thereof approved March 30, 1872, and the acts amendatory thereof, caused

said respective companies and associations to be assessed for taxation for said year 1900 by the local assessors of the towns and counties in said state, respectively, in which said companies and associations were respectively located, in like manner as the property of individuals was required to be assessed for taxation for said year
1900 (*i. e.*, upon their tangible property only and not upon
26 any capital stock); and not by the State Board of Equalization or in like or similar manner as your orator and the capital stock of your orator and other companies or associations than those above in this paragraph mentioned was by the said state caused to be assessed by the State Board of Equalization for said year 1900; in this, that said State of Illinois caused said respective companies and associations first above in this paragraph mentioned, to be assessed only upon or for their tangible property and not upon or for their capital stock, and without any assessment of the capital stock of said respective companies or associations or any or either of them. And your orator charges and submits that thereby the State of Illinois denied and denies to your orator the equal protection of the laws; and that by said pretended assessment of November, 1901, for the year 1900, of the capital stock of your orator, the State of Illinois denies, and by the enforcement thereof will deny, to your orator the equal protection of the laws, and particularly the equal protection of the provision and requirement of Article 9 of the Constitution of the State of Illinois that the assessment of all property for taxation shall be uniform in respect to persons and property so that every person and corporation shall pay a tax in proportion to the value of his, her or its property, and that the respective taxes extended upon the assessments of property for taxation shall be uniform in respect to persons and property within the jurisdiction of the body imposing the same.

16. Upon information and belief your orator shows that the said defendant sometimes pretends that the said assessment of the capital stock of your orator so made by the said State Board of Equalization at its session in the year 1900, was fraudulent and void; of all which your orator charges the contrary. And your orator shows that included among the taxes which were levied and extended
27 upon the said assessment of 1900 last mentioned, and which were exacted from and paid by your orator as hereinbefore mentioned, were the taxes of the following state, municipalities, districts and boards and agencies for said year 1900, and none other, viz:

The State of Illinois,
Said County of Cook,
The City of Chicago,
The Town of Hyde Park,
The Sanitary District of Chicago,
The South Park Commissioners,

and that said state and county, and each of said municipalities, districts, boards and agencies accepted and received said taxes for the year 1900 upon the said assessment of 1900 last mentioned and so paid by your orator, and have applied the same to their own uses

for which they were levied and collected; and that no part of the same has ever been repaid or returned to your orator. And your orator submits and charges, with respect to the taxes of the said state, county, municipalities, districts, boards and agencies, that the said assessment of the capital stock of your orator so made by the said State Board of Equalization in 1900, is unimpeachable, and that they, the said State of Illinois, County of Cook, and said respective municipalities, districts, boards and agencies, and the said defendant and all other persons are estopped from impeaching said assessment of 1900 last mentioned, or from asserting that the same was fraudulent and void, as against your orator.

17. Upon information and belief your orator shows that the said defendant sometimes further pretends that on or about November 10, 1900, and after the said session of the said State Board of Equalization for the year 1900 had commenced and while the same was in progress, Catharine Goggin and Robert C. Steele filed their certain petition in the Circuit Court of Sangamon County, in
28 said State of Illinois, against the said State Board of Equalization and the then members thereof as defendants, containing divers averments and charges in that behalf, and praying said court last mentioned to issue the writ of mandamus, directed to said State Board of Equalization and to each member thereof, commanding it and them forthwith to value and assess the capital stock, including the franchises, of your orator and of twenty-two other companies in said petition named, in the manner provided by law, and that it and they, said members, value the capital stock of said companies so as to ascertain and determine, respectively, as to each of said companies, the fair cash value of its capital stock, including the franchise, over and above the assessed value of the tangible property of such company, and that the same be done at the then present annual meeting of said State Board then being held, and before the final adjournment of said annual meeting, and that in arriving at said values and assessments of the capital stock, including the franchises, of said companies in said petition named, said State Board and each member thereof should, from the best information obtainable by it and them, ascertain and take into consideration, among other things, as to each such corporation as the same was on the first day of April, 1900, the market value, or if no market value, then the actual value of its shares of stock, and the total amount of its indebtedness, except the indebtedness for current expenses, excluding from such expenses the amount paid for the purchase or improvement of property, and the assessed or equalized valuation of all tangible property it owned on April 1, 1900; and further commanding said State Board and said members thereof to direct the respective assessments so made to be certified by said auditor to the County Clerk of said Cook County, that the taxes for all purposes thereon might be extended by said clerk; and that a
summons might issue against the said defendants according
29 to the law, and such further orders be made in the premises as justice might require and to the court should seem proper; and that afterwards, on November 24, 1900, and while the session

of the said State Board of Equalization for the year 1900 was still in progress, the said defendants to said petition, the said State Board of Equalization and its then members, did answer said petition for mandamus and the said petitioners did reply to said answer; and that such further proceedings were therein had that afterwards, at the March term, 1901, of the said Circuit Court of Sangamon County, said suit or proceedings for mandamus came on for hearing in said last named court, and on May 1, 1901, one of the days of the said March term of said last named court, by the judgment of said last named court then and there entered it was considered and adjudged that the peremptory writ of mandamus should issue as prayed for in said petition as to your orator and as to nineteen other of the said corporations named in said petition (being the nineteen other selected companies hereinabove referred to), commanding the said State Board of Equalization and the members thereof to convene forthwith at the Capitol Building in the said County of Sangamon and forthwith value and assess the capital stock, including the franchise, of each of said twenty companies, including your orator, named in said judgment order, as of April 1, 1900, in the manner provided by law, so as to ascertain and determine, respectively, as to each of said companies the fair cash value of its capital stock, including its franchise, over and above the assessed value of the tangible property of said company for the year 1900; and that in arriving at such valuations and assessments of the capital stock, including the franchises, of said companies, said board and each member thereof, should, from the best information obtainable by it and them, ascertain and take into consideration among other things as to each said corporation, as the same was on the first day of April, 1900, the market value, or if no market value, then the fair cash value of its shares of stock and the total amount of all its indebtedness, except the indebtedness for current expenses, excluding from such expenses the amount paid for the purchase or improvement of property, and the assessed or equalized valuation of all tangible property of said corporations, respectively, on said April 1, 1900; and further commanding the said State Board and the members thereof to direct the respective assessments so made to be certified by the said Auditor of Public Accounts to the County Clerk of said Cook County, that the taxes for all purposes thereon might be extended by the said clerk for the year 1900; and that afterwards, on November 2, 1901, there was issued out of the said Circuit Court of Sangamon County in the said mandamus proceedings the peremptory writ of mandamus as provided by said judgment, addressed to the State Board of Equalization of the State of Illinois, and to the respective members thereof, reciting the said judgment and commanding the said State Board of Equalization and the members thereof, and each of them, to convene at the Capitol Building in Sangamon County, in the said State of Illinois, and there forthwith to value and assess the capital stock, including the franchise, of each of said twenty corporations named in said writ (including, with said nineteen others, your orator), as of the first day of April, 1900, in the manner provided by law, so as to ascertain and determine, respectively, as to each of said corporations,

the fair cash value of its capital stock, including the franchise, over and above the assessed value of the tangible property of such corporation for the year 1900, and further ordering and commanding that in arriving at such valuations and assessments the said State Board and the members thereof, and each of them, should, from the best information obtainable by it and them, ascertain and take into
31 consideration, among other things, as to each such corporation, as the same was on the first day of April, 1900, the market value, or if no market value, then the fair cash value of its shares of stock and the total amount of all its indebtedness except the indebtedness for current expenses, excluding from such expenses the amount paid for the purchase or improvement of property and the assessed or equalized valuation of all tangible property of said corporations, respectively, on said April 1, 1900; and directing the respective assessments so made to be certified by the Auditor of Public Accounts to the County Clerk of said Cook County, that the taxes for all purposes thereon might be extended by said clerk for the year 1900, and to make return to said Circuit Court of Sangamon County on November 22, 1901, in what manner they should have complied with said order.

And that said defendant pretends that the said pretended assessment of the capital stock of your orator above mentioned, so made by the said State Board of Equalization on or about November 22, 1901, was made in pursuance of and in obedience to the said judgment and writ of mandamus in that behalf, and that the said certifying and return of the said pretended assessment last mentioned to the County Clerk of Cook County and the issuing of the said collector's books and warrant for the collection thereof against your orator as above mentioned, were, respectively, in pursuance of the said judgment and writ of mandamus.

But your orator, in reply to the foregoing, charges and shows that your orator was not in any way a party or privy to the said mandamus proceedings or judgment, and was not notified thereof or in any manner made or admitted as a party thereto; and that the said mandamus suit and proceedings and judgment and writ of mandamus therein were and are, as against your orator, wholly
32 *res inter alios* and null and void; and that your orator of right is not and cannot be affected thereby. And your orator further shows that the said pretended judgment in said mandamus proceedings was rendered and entered, and said pretended writ of mandamus was issued, long after the said State Board of Equalization had, during its session of 1900, made and completed the assessment on the capital stock of your orator and other corporations, and long after the said State Board had equalized the assessments of property and made the assessments of property by it to be made for said year 1900 and completed its work and session of said year 1900 and finally adjourned without day; and long after the said equalization and assessments by the said State Board for the year 1900 had been certified to the respective county clerks in said State of Illinois, and long after the assessment of the capital stock of your orator for the year 1900 so made by the said State Board for the year 1900 had been

certified to the County Clerk of Cook County, and long after all the said taxes for the year 1900 to which your orator or its property was subject had been extended by the said County Clerk and collected by the said collector and paid by your orator as aforesaid, and turned over by the said collector to the municipalities and public authorities entitled thereto, and appropriated and applied, respectively, by the State of Illinois, the County of Cook, the City of Chicago and other municipalities and public authorities, to the purposes for which said taxes for the year 1900 were levied and assessed and collected.

Upon information and belief your orator shows that in making the said pretended assessment of the capital stock of your orator for the year 1900, on or about November 22, 1901, the said State Board of Equalization and the then members thereof conceived and believed that they should adopt and follow and carry out in said assessment,

as the fair cash value of the capital stock of your orator on
33 April 1, 1900, such sum as they then understood and believed
the judge presiding in the said Circuit Court of Sangamon

County, in said mandamus suit or proceeding had found, determined or conceived, to be the fair cash value of the capital stock, including the franchise, of your orator on said April 1, 1900, and not such sum as the said State Board of Equalization or the members thereof, acting upon their own knowledge and judgment and from the best information obtainable by them, and without coercion or control of their judgment as to the fair cash value of such capital stock on April 1, 1900, should determine; and in making said assessment last mentioned the said State Board and the members thereof, so conceiving and believing, made the said pretended assessment on or about November 22, 1901, not upon or according to their own judgment, or at such sum as they, from the best information obtainable by them, and upon their own judgment determined, or would have determined, the fair cash value of the capital stock of your orator on April 1, 1900, to have been; but at such sum as they understood and believed would meet the judgment or wish of said judge presiding in said Circuit Court of Sangamon County; and that the said State Board and the members thereof in making said assessment last mentioned conceived and believed that unless they made the said assessment last mentioned, in the manner aforesaid, at the sum which they understood and believed would meet the judgment or wish of said presiding judge of said Circuit Court of Sangamon County, or should make the said assessment of the capital stock of your orator upon or according to their own judgment, from the best information obtainable by them, their return to the said writ of mandamus required to be made by the said Circuit Court of Sangamon County, would not be accepted or approved by the said judge as a compliance with said writ of

mandamus; and that they, the said members of the said State
34 Board of Equalization, might be thereon adjudged guilty
of contempt of said last named court and be punished therefor.

And your orator is advised and charges and shows that said pretended assessment of November 22, 1901, and the extension of said pretended taxes for 1900 thereon, and the threatened and at-

tempted collection by defendant of said taxes against your orator and its property as above mentioned, seeks to affect and bind, and if carried out and said tax should be collected or enforced, would affect and bind your orator and its property by and to said proceedings in mandamus and said judgment and writ therein, to none of which was your orator in any way a party; and that so to bind or affect your orator or its property by said mandamus proceedings, judgment or writ, or by anything done, coerced or directed thereby as aforesaid, or to enforce against your orator or its property said pretended assessment of November 22, 1901, upon the capital stock of your orator so coerced and directed to be made, or the said pretended taxes for 1900 extended thereon, would deprive your orator of its property without due process of law, in violation of the fourteenth amendment to the constitution in that behalf.

That at the time when the said petition for mandamus was filed as aforesaid, on or about November 10, 1900, the said State Board of Equalization had completed or made no assessment of any of the capital stock or property of any corporation, nor any assessment whatever; and had not completed or made its equalization of the assessments of property for said year 1900; and that the acts and action of said State Board with respect to the assessment of the capital stock of your orator and said nineteen other selected companies mentioned in said mandamus proceedings and judgment and writ, and the pretended or supposed non-feasance, failure
35 or refusal of said board with respect to the assessment of the capital stock of your orator and said other nineteen selected companies, were in all respects identical and the same as and not in anywise other or different from the action or failure to act, non-feasance or refusal to act in the matter of the assessment of the capital stock of all the rest of the corporations in said state, and with respect to all and every the assessments and the equalization of assessments by the said State Board for the year 1900 at that time. And that the said State Board in making its assessments for the year 1900, at its session of 1900, as aforesaid, made its assessments of the capital stock of all of the corporations of said state, subject to assessments by said State Board, according to the judgment of the said board and the members thereof, upon the same and the like basis, and not otherwise; and that the action of the said board at its said session of 1900 with respect to the assessment of the capital stock of each and all of the said 334 corporations, including your orator and said other nineteen selected corporations, was done at the same time, in the same manner and according to the same ratio, basis or standard of value, according to the judgment of the said State Board and of the members thereof. And that the said petitioners in said mandamus proceeding arbitrarily selected and picked out your orator and said nineteen other corporations, although the facts or supposed facts alleged in said petition with respect to the action or non-feasance, failure or refusal to act of the said State Board with respect to said twenty corporations was not other or different than with respect to the rest of said 334 corporations; and the said petitioners in said mandamus proceeding, and

the said Circuit Court of Sangamon County in its said judgment and writ, and the State Board at its said pretended session on or about November 22, 1901, in making said pretended assess-
36 ment of the capital stock of your orator and said nineteen other selected companies under the coercion of said writ of mandamus, arbitrarily and intentionally selected and picked out said twenty selected companies only, and omitted and ignored the rest of said 334 corporations; and thereby arbitrarily and intentionally discriminated against your orator; and arbitrarily and intentionally compelled and made the said pretended assessment of November 22, 1901, against your orator, upon a greatly excessive and entirely different standard of value from the said assessment of said other corporations not thereby again assessed; and that for the reasons aforesaid, to bind or affect your orator or its property by or because of said pretended mandamus proceedings, judgment or writ, or because of said pretended assessment of November 22, 1901, would deny to your orator the equal protection of the laws, in violation of said fourteenth amendment.

18. That your orator has, as aforesaid, fully paid all the taxes for the year 1900 which were legally assessed or levied against it or its property.

That there is no part of said alleged taxes extended upon said pretended assessment of November 22, 1901, and so as aforesaid sought to be enforced and collected by said defendant, which is due from your orator. Nevertheless, your orator is ready and offers to do full equity; and in case any part of the just or legal taxes for 1900 against your orator or its property is found or decreed to be unpaid and due (which your orator does not admit but denies), your orator is ready and willing to pay whatever may be found to be unpaid and due.

19. That the sum or value in dispute herein exceeds the sum of two thousand dollars ($2,000), exclusive of interest and costs.

37 20. That in making said pretended assessment of the capital stock of your orator on or about November 22, 1901, and in extending thereon the rates for taxes for the year 1900, as aforesaid, no credit or deduction whatever was made for the sum (amounting to $3,933.50, or thereabouts), already paid by your orator as taxes for said year 1900 upon said capital stock as aforesaid, and said sum of $33,569.40 so sought to be collected by said defendant as such taxes for the year 1900, and sought by your orator herein to be enjoined, makes no credit or allowance for taxes for the year 1900 upon its capital stock paid by your orator as hereinbefore stated.

Forasmuch, therefore, as your orator is without remedy, save in a court of equity, to the end that the said defendants, James Baird, Town Collector, and Samuel B. Raymond, County Collector, may answer all and singular the premises in this bill of complaint contained, but not under oath, answer under oath being hereby waived; and that this Honorable Court may determine, adjudge and decree the question of the construction and application of the said provisions of the fourteenth amendment of the constitution, to protect

your orator and its property against the said pretended assessment of November 22, 1901, for said year 1900, of the capital stock of your orator, and against the said pretended taxes for said year 1900 extended thereon and sought by said defendant to be collected as aforesaid, and may find and adjudge that the said pretended assessment and tax would deny to your orator the equal protection of the laws and would deprive your orator of its property without due process of law, as hereinbefore charged; and that the court will enjoin the defendant from enforcing or attempting to enforce the said pretended taxes for the year 1900 on said pretended assessment last mentioned, and from levying upon or interfering with the
38 property of your orator or any part thereof for the collection or payment of said pretended tax last mentioned or any part thereof; and that said pretended tax last mentioned may be found and decreed to be in violation of the constitutional rights of your orator as aforesaid and of the said provisions of the constitution in that behalf, and null and void; and that upon the hearing herein said injunction may be made perpetual; and that your orator may have such other, further or different relief as to your Honors shall seem meet and to equity shall appertain.

May it please your Honors to grant unto your orator the temporary writ of injunction, enjoining and restraining the defendant as above prayed until the further order of the court; and also the writ of subpœna, directed to the marshal of said district, commanding him to summon and subpœna the said defendants, James Baird and Samuel B. Raymond, to be and appear in this Honorable Court at the next, the February, 1902, rule day herein, and to answer all and singular the premises and to stand to and abide such order and decree as may be herein made.

And your orator, as in duty bound, will ever pray, etc.

CHARLES C. GILBERT AND
PECK, MILLER & STARR,
Solicitors for Complainant.

CHARLES C. GILBERT,
JOHN S. MILLER,
Of Counsel.

39 STATE OF ILLINOIS, *Cook County, ss:*

Dwight F. Cameron, being first duly sworn, on oath says that he is the president of the South Chicago City Railway Company, aforesaid, the complainant in the foregoing bill; that he has read the foregoing bill and knows the contents thereof; and that the same is true of his own knowledge, except as to those matters which are therein stated to be upon information and belief, and as to those matters he believes it to be true; and that he makes this affidavit on behalf of the said complainant.

DWIGHT F. CAMERON.

Subscribed and sworn to before me, this 14th day of February, 1902.

EMANUEL P. BARNETT,
[NOTARIAL SEAL.] *Notary Public, Cook Co., Ills.*

Endorsed: Filed Feb. 15, 1902, S. W. Burnham, Clerk.

40 And on to-wit: the twenty-eighth day of June, 1902, came Samuel B. Raymond County Treasurer and James Baird Collector of the town of Hyde Park by their solicitors and filed in the clerk's office of said Court their joint and several answer in words and figures following to-wit:

41 *Answer.*

In the United States Circuit Court, Northern District of Illinois.

No. —.

South Chicago City Railway Company, Complainant,

vs.

Samuel B. Raymond, County Treasurer and *ex-officio* County Collector of Cook County, and James Baird, Collector of the Town of Hyde Park, Defendants.

The joint and several answer of Samuel B. Raymond, County Treasurer and *ex-officio* County Collector of Cook County, and James Baird, Collector of the Town of Hyde Park, defendants in the above entitled cause, by Edwin W. Sims, County Attorney, Frank L. Shepard, Assistant County Attorney, and William F. Strucknann, Assistant County Attorney, their solicitors, to the bill of complaint of the South Chicago City Railway Company, complainant.

These defendants, now and at all times hereafter, saving and reserving unto themselves all benefit and advantage of exception, which can or may be had or taken to the many errors, uncertainties and other imperfections in the said bill contained, for answer thereunto, or to so much and such parts thereof, as these defendants are advised it is or are material or necessary for them to make answer unto, answering say:

1. Thes- defendants admit that the complainant is a corporation organized and existing under the laws of the State of Illinois and owns and is possessed of a street railroad in the Town of Hyde Park in the City of Chicago, County of Cook, Illinois; that the
42 amount of the outstanding capital stock of complainant on the 1st day of April, 1900, was 16,038 shares at the par value of $100 per share, and that on said 1st day of April, 1900 there was an outstanding indebtedness of the complainant of the amount of $1,563,000, as in complainant's bill of complaint alleged.

2. These defendants admit that the defendant James Baird is the Collector of the Town of Hyde Park in Cook County, Illinois and that the defendant Samuel B. Raymond is the County Treasurer and *ex-officio* County Collector of Cook County, Illinois.

3. These defendants admit that the Board of Assessors of Cook County, Illinois, for the year 1900, made an assessment of the taxable property of complainant in Cook County, subject to assessment

by said Board of Assessors, and returned said assessment to the Board of Review of Cook County, Illinois, who reviewed the same, and in due course of time returned the same to the County Clerk of Cook County, as required by law.

4. These defendants admit that the members of the State Board of Equalization are elected as in the 4th paragraph of complainant's bill of complaint alleged; and admit that said Board assembled in regular session at Springfield on or about the 11th day of September 1900, as required by law, and did proceed with the equalization, and did equalize the assessments of property in the State of Illinois for the year 1900, and that said State Board proceeded to make assessments of property subject to assessment by said State Board for the year 1900; and admit that in due course of time said State Board adjourned *sine die*. And these defendants state and allege the fact to be that said State Board of equalization did make an alleged assessment of the capital stock and franchise of complainant for the year 1900 in excess of the assessment of the tangible properties of complainant, and that such alleged assessment, together with other assessments, was certified to the County Clerk of Cook County, and that said County Clerk extended against said alleged assessment taxes for the year 1900, as required by law; but these defendants
43 deny that in making said assessment the said State Board of Equalization so valued the capital stock and franchise of complainant as to ascertain and determine the fair cash value thereof; over and above the assessed value of the tangible property of complainant; but these defendants admit that the alleged assessment as made by said State Board was the sum of $250,000 as the full value, and the sum of $50,000 as the assessed value; but these defendants state and allege the fact to be, that the actual full cash value of complainant's capital stock and franchise on April 1, 1900 was far in excess of the value alleged to have been found by the State Board of Equalization, and that the actual fair cash value thereof on the 1st day of April, 1900, was in excess of $2,846,040; that notwithstanding the fair cash value of complainant's capital stock and franchise as aforesaid, the said State Board of Equalization in total disregard of its duty as required by law, wilfully and fraudulently found the full value of complainant's capital stock and franchise as above set forth, and set down an assessment of the same over and above the assessment of its tangible property by the local assessors as above set forth, which said fraudulent and illegal action on the part of said State Board of Equalization in relation to the valuation and assessment of complainant's property was had by and with the concurrent fraudulent action of complainant itself in its failure to properly list and schedule its property for purposes of taxation, to furnish the statements required by law, and in its fraudulent representations to the said State Board; and these defendants further allege and state the fact to be that the said alleged assessment was and has been, long prior to the filing of this bill, held and declared by the Circuit Court of Sangamon County and by the Supreme Court of the State of Illinois to be null and void; and a re-

assessment of the capital stock and franchise of the said complainant, over and above the assessed value of its tangible property, was ordered by the Circuit Court of Sangamon County. These defendants admit that the collector's warrants for the Town of Hyde Park for the year 1900 were by the County Clerk of Cook County delivered to
44 the Collector of the Town of Hyde Park for said year, and that in said warrant there was an extension of taxes against the said alleged assessment by said State Board of Equalization of the capital stock and franchise of complainant for said year 1900.

5. These defendants admit that complainant paid to said Town Collector the taxes extended against said alleged assessment, and that the taxes were distributed to the different municipalities and taxing districts entitled to the same.

6. These defendants admit that — the general election in the State of Illinois in 1900 James S. McCullough was elected State Auditor, and that he duly qualified as such; and that at the same election there was elected in each congressional district of the State of Illinois members of the State Board of Equalization, and that each and every one of said members duly qualified, and that the members who were so elected and who so qualified are as named in paragraph 6th of complainant's bill of complaint.

7. These defendants further answering state and allege the fact to be that the State Board of Equalization at its regular session in the year 1901 did make an assessment of the capital stock and franchise of complainant for the year 1900; that the said State Board, after a due consideration of the value of the capital stock and franchise of complainant and of the value of all other properties assessed in the State of Illinois for the year 1900, did ascertain and determine the full value of the capital stock and franchise of complainant for said year 1900 at the sum of $2,846,040, and at an assessed value of $569,208, and deducted from said assessed value the equalized assessed valuation of the tangible property of complainant assessed by the local assessors at $135,322, leaving a net assessment of capital stock, including franchise, in excess of the equalized value of capital stock and debt over tangible property of $433,886, as the assessed value, which said assessment was certified to the County Clerk of Cook County, who thereafter extended against said assessment taxes for the year 1900, as required by law, amounting in the aggregate to the sum of $33,569.40, and returned the collector's warrants for the collection of said taxes to the defendant James Baird, Collector of the Town of Hyde Park. These defendants admit that
45 the said defendant James Baird has demanded of complainant payment of the said taxes, and that under the laws of the State of Illinois it is the duty of said defendant to levy upon the tangible property of complainant to make said taxes, and that unless the said taxes are collected by the defendant Baird, it will thereafter become the duty of the defendant Samuel B. Raymond as County Collector to make collection of the same.

8. These defendants further answering deny that the said complainant had no notice of the meeting of the State Board of Equalization in the year 1901; but these defendants state and allege the fact

to be, that at the time of making said last assessment the said State Board of Equalization was in regular session, as required by law, and that the complainant herein had knowledge and information that said State Board of Equalization was in session, and that it was the duty of said State Board to make an assessment of the capital stock and franchise of complainant for the year 1900; and these defendants state and allege the fact to be that the complainant had full opportunity to be heard by said State Board in making said assessment.

6. These defendants further answering deny that the collection of said sum of $33,569.40, or any portion thereof, will be depriving complainant of its property without due process of law.

10. These defendants further answering as to the allegations in paragraph 10th of complainant's bill of complaint concerning the alleged assessments of the different properties therein named say, that they have no knowledge or information concerning the same, except as in and by said bill of complaint contained, and neither admit nor deny the same, but if the same should become material to the issues herein, call for strict proof thereof.

11. These defendants further answering deny that the State Board of Equalization in the year 1901 in making the assessment of the capital stock and franchise of complainant for the year 1900, intentionally or knowingly assessed or valued the capital stock and franchise of complainant upon a higher ratio or standard of value than other properties in the State of Illinois for said year
46 1900 and deny that no assessment of the capital stock and franchise of other Illinois corporations subject to assessment upon their capital stock and franchise was made for the year 1900, as in complainant's bill of complaint alleged.

12. These defendants deny that the valuation of complainant's capital stock and franchise fixed by the State Board of Equalization in the year 1901 for the year 1900 was very much greater than the fair cash value thereof; and deny that the members of the State Board of Equalization intended at the time of making said assessment that said assessment should be greatly in excess of the fair cash value of the capital stock and franchise of complainant, or greatly in excess of the valuation of the capital stock of other corporations generally in the State of Illinois.

13. These defendants further answering deny that the assessments made by said State Board of Equalization in the year 1901 for the year 1900 were upon a much higher ratio or standard of value than the assessments made upon other properties in the State of Illinois for said year 1900; and deny that said assessment was intended by said State Board of Equalization to be, or that the same was, upon a different ratio or standard of value than the assessments of the capital stock of other corporations generally in the State of Illinois for the year 1900; and deny that in making said assessment the said State Board intended or purposed that complainant should pay taxes for the year 1900 which would not be in proportion to the value of its property; and deny that said tax was intended to be discriminating, excessive or unjust; and deny that the sum of $33,569.40 extended

as aforesaid, is a just or uniform tax in proportion to the value of complainant's property; but these defendants state and allege the fact to be that the different assessing tribunals of the State of Illinois intended to assess and did assess all property subject to assessment by them at one-fifth of what such assessing tribunals considered and ascertained to be the actual full fair cash value thereof.

14. These defendants further answering deny that the enforcement of the collection of said tax by levy upon complainant's
47 property will deny to complainant the equal protection of the laws guaranteed to complainant by Sec. 1 of the 14th amendment to the constitution of the United States.

15. These defendants further answering deny that the complainant is denied the equal protection of the laws, or is denied any rights guaranteed to it by the constitution of the State of Illinois or the constitution of the United States, by reason of any laws of the State of Illinois, or actions of the assessing tribunals referred to in paragraph 15th of complainant's bill of complaint.

16. These defendants state and allege the fact to be that the assessment made by the State Board of Equalization at its session in the year 1900 was fraudulent and void, and that it has been declared to be fraudulent and void and of no*t* effect in the proceedings in the Circuit Court of Sangamon County and in the Supreme Court of Illinois, as hereinafter in this answer set forth; and these defendants deny that the said assessment made by the State Board of Equalization in the year 1900 is impeachable; and deny that the State of Illinois or the County of Cook, or any of the different municipalities are estopped from asserting that the said assessment was or is fraudulent or void.

17. These defendants further answering admit that while the State Board of Equalization was in regular session in the year 1900 mandamus proceedings were commenced in the Circuit Court of Sangamon County by the People of the State of Illinois upon the relation of Catherine Goggin and Robert C. Steele against the said State Board of Equalization to compel the said State Board of Equalization to make a proper assessment of the capital stock and franchise of complainant and other corporations named in the petition for mandamus; that the complainant herein was not a party defendant to said mandamus proceedings. These defendants however state and allege that this complainant and the other corporations named in said petition were requested and directed by said State Board to appear in said mandamus proceeding by their own solicitors and to make such defense or
48 defenses as they might deem advisable; that this complainant and other corporations, after a due consideration of the premises, employed attorneys and counsellors, who appeared in said proceedings in said Sangamon County Circuit Court and in the appeal taken to the Supreme Court of the State of Illinois, and made such defenses as they deemed advisable, which defenses were made for the benefit of the complainant herein and the other corporations as fully and effectually as if this complainant and the other said

corporations had been parties to the said petition for mandamus by name. These defendants admit that final judgment was rendered by the Circuit Court of Sangamon County, and that an appeal was prayed to the Supreme Court of the State of Illinois. These defendants state and allege the fact to be that on or about the 24th day of October, 1901, the Supreme Court of Illinois affirmed the said judgment of the said Circuit Court of Sangamon County, and that thereafter a peremptory writ of mandamus was issued by the Circuit Court of Sangamon County commanding said State Board of Equalization to make a proper assessment of the capital stock and franchise of complainant for the year 1900. And these defendants state and allege the fact to be that the assessment thereafter made by said State Board of Equalization of the capital stock and franchise of complainant for the year 1900 was made in pursuance to the said mandate of the Circuit Court of Sangamon County; but these defendants deny that the members of the said State Board of Equalization conceived or believed that they should follow and adopt as the assessment of the capital stock and franchise of complainant for said year 1900 such sum or sums as they understood and believed the judge of the Circuit Court of Sangamon County found, determined or conceived to be the fair cash value thereof; and that they should not act upon their own judgment, knowledge or information obtainable by them, without coercion or control. And these defendants deny that the said assessment was not made upon or according to the judgment of the State Board of Equalization at such sum as the members thereof from the best information obtainable by them upon their own judgment determined to be the fair cash value of complainant's capital stock and franchise on the 1st day of April 1900; but these defendants state and allege the fact to be, that
49 the said State Board of Equalization, after a due consideration of the value of such capital stock and franchise as of the 1st day of April, 1900, in the exercise of their free and independent judgment, did assess the capital stock and franchise of complainant for said year at the sums heretofore set forth; but these defendants deny that said assessment was an arbitrary or international discrimination against complainant.

18. These defendants deny that complainant has fully paid all taxes for the year 1900 which were legally assessed or levied against it or its property; but these defendants admit that complainant paid the taxes extended against said assessment, which was by the judgment of the Circuit Court of Sangamon County and the Supreme Court of the State of Illinois declared illegal and void, and that no credit has been given complainant on account of such payment.

And these defendants further answering say as to the allegations in said bill of complaint contained, not herein specifically answered, admitted or denied, these defendants neither admit nor deny the same, but call for strict proof thereof.

And these defendants further answering deny that the complainant is entitled to the relief or any part thereof in said bill of complaint demanded, and they pray the same advantage of this answer as if they had pleaded or demurred to the same; and they pray to be

dismissed with their reasonable costs and charges in this behalf sustained.

SAMUEL B. RAYMOND,
County Treasurer and ex-Officio County Collector of Cook County,
By JAMES BAIRD,
Collector of the Town of Hyde Park,
By EDWIN W. SIMS, *County Attorney.*
FRANK L. SHEPARD,
Asst. Co. Att'y.
WILLIAM F. STRUCKMANN,
Asst. Co. Att'y, Their Solicitors.

EDWIN W. SIMS,
County Treasurer.
FRANK L. SHEPARD,
Asst. Co. Att'y.
WILLIAM F. STRUCKMANN,
Asst. Co. Att'y, Solicitors for Said Defendants.

(Endorsed:) Filed Jun. 28, 1902. Marshall E. Sampsell, Clerk.

49½ And on to-wit: the ninth day of June, 1902, there was filed in the clerk's office of said court a certain Master's Report and testimony in words and figures following to-wit:

50 *Master's Report & Testimony.*

UNITED STATES OF AMERICA,
Northern District of Illinois, Northern Division, ss:

In the Circu Court of the United States, Northern District of Illinois, Northern Division.

In Chancery. No. 26169.

SOUTH CHICAGO CITY RAILWAY COMPANY
vs.
JOHN BAIRD, Collector, and SAMUEL B. RAYMOND, Collector.

Master's Report.

To the Honorable, the Judges of said Court:

In obedience to an order of the court entered in the above entitled cause on the 25th day of April, A. D. 1902, by which it was referred to the undersigned to ascertain and report the amount of additional taxes to be paid by complainant herein for the year 1900, upon the basis prescribed therein, and further to show the amounts of the respective deductions from the gross earnings for depreciation upon the value of the tangible personal property of the complainant, and for the additional taxes for the year 1900 to be paid by said com-

plainant as therein directed, I have been attended from time to time by the solicitors for the different parties who have introduced
51 before me witnesses whose testimony is herewith returned.

Upon an examination of this testimony and after hearing the suggestions of counsel at length, I find and report

First: that the amount of additional taxes to be paid by complainant herein, as aforesaid, is the sum of One hundred and Eighty-four dollars and eighty-eight cents ($184.88).

This result is the sum I have arrived at by the computation shown in the following statement which has been furnished by the counsel for the complainant herein, and which I find to be established by the testimony:

Gross Earnings		$213,103.34
Operating Expenses	$138,751.47	
6% of the full value of $597,142.85, for depreciation	35,828.57	
Deduct additional taxes to be paid...	184.88	174,764.92
True Net Earnings		$38,338.42
Capitalized at 6%, gives Full Value		638,973.66
Take 70% for Equalized Value		447,281.57
Take one-fifth for Assessed Valuation		89,456.31
Total Tax at rate of .0737		$6,592.93
Deduct Tax paid		6,408.05
Tax to be Paid		$184.88

52 Other computations upon which the contentions of defendants' counsel are based have been furnished me and I have carefully examined and considered them and heard the suggestions of counsel in support of them but, in arriving at the conclusion heretofore stated, I have not adopted such computations because they are not in my opinion supported by the testimony, upon the basis of calculation prescribed in said order.

All of which is respectfully submitted.

HENRY W. BISHOP,
Master in Chancery of the Circuit Court of the United States, Northern District of Illinois.

Dated June 7, A. D. 1902.

I concur in the conclusions reached in the foregoing report.

WALTER McC. ALLEN,
Master in Chancery of the Circuit Court of the United States, Southern District of Illinois.

[Endorsed:] South Chicago City Ry. Co. *vs.* Baird *et al.*—Master's Report—6/7/02.

53 SOUTH CHICAGO CITY RAILWAY CO.
vs.
JOHN BAIRD, Collector, ET AL.

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Witnesses.	Direct.	Cross.	Re-dr.	Re-cr.
Otho S. Gaither.....	2	7	21	23
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Otho S. Gaither (Recalled).	26	29	..	..
do	31	..	..	..
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54 *Exhibits & Documentary Offers.*

Page.	Whose.	No.	Description.
41	Comps.		Appropriation ordinance of City of Chicago of April 4, 1900.
43			Reduction ordinance passed Oct. 8, 1900.
44			Levying ordinance passed April 23, 1900.
"			Appropriation ordinance passed 1/23/00 by Cook County.
45			Certified copy of tax levy for 1900 by South Park Commissioners.
50			Certified copy of Town of West Chicago tax levy for 1900 of $60,000.00 for bonded debt 7/27/00.
51			Certified copy of Town of Lake View levy of $60,000 for Lincoln Park for 1900, 10/11/00.
52			Certified copy of ordinance of town of North Chicago 10/10/00 levying various amounts.
53			Certified copy of ordinance of West Chicago Park Commissioners 7/18/00 levying various amounts.
60			Amounts collected and uncollected on above appropriation.
64			Amounts of taxes on warrants in favor of each municipality for 1900.
67			Objection of Guarantee Title & Trust Co. to Judgment of sale for delinquent taxes.

55 UNITED STATES OF AMERICA,
Northern District of Illinois, Northern Division, ss:

In the Circuit Court of the United States, Northern District of Illinois, Northern Division.

In Chancery. No. 26169.

SOUTH CHICAGO CITY RAILWAY COMPANY
vs.
JOHN BAIRD, Collector, and SAMUEL B. RAYMOND, Collector.

Testimony taken before Henry W. Bishop, Master in Chancery, on Monday, April 28, A. D. 1902, at two o'clock in the afternoon.

Present: Charles C. Gilbert, Esq. and John S. Miller, Esq. Solicitors for complainant; Frank L. Shepard, Esq., On behalf of the defendants.

It is stipulated that this evidence may be regarded as taken under the order of court that is to be entered, *nunc pro tunc*, as of a day prior to this.

56 OTHO S. GAITHER, called as a witness on behalf of the complainant, being first duly sworn, was examined in chief by Mr. Miller and testified as follows:

Q. State your name, residence and business.

A. Otho S. Gaither, 4435 Champlain Avenue, secretary of the South Chicago City Railway Company.

Q. Have you been secretary of the South Chicago City Railway Company, the complainant, for a number of years?

A. Yes, sir.

Q. Are you able to state, if so, will you please to state, with respect to the year ending March 31, 1900, or April 1, 1900, what the gross earnings and the operating expenses, the expenses for replacements but not for extensions, and for depreciation of the property of the South Chicago City Railway Company and its property were?

A. Yes.

Q. You can state?

A. Yes.

Q. You may do so.

A. The gross earnings for the year ending March 31, 1900, were $209,222.85; operating expenses for the same period, including interest paid other than on bonds of $11,146.56, were $156,779.13. The expenditures for replacement were $39,467.21.

Q. And the depreciation?

A. The depreciation was $5,016.00.

57 Q. What was the total of the operating expenses, replacements, and depreciation as you give them?

A. They were $201,262.34.

Q. What was the remainder, or the net earnings, not included in the expenses, nor in payments of interest on bonds of the company?

A. $7,960.51.

Q. You have not included in that anything for interest upon bonds of the company?

A. No, sir.

Q. The interest that was included in the operating expenses was for interest on what?

A. That is interest on borrowed money.

Q. Was that properly a current expense of the maintenance and operation of the road?

A. Yes, sir.

Q. What would you say as to whether the replacements that you have stated there were actually made, that is made an expenditure for that year?

A. That money was actually expended in that year for replacements and extraordinary repairs.

Q. And the amount of depreciation which you have given, or $5,016.00, what would you say as to whether or not that was a

reasonably low statement of the actual amount of depreciation in the railroad property of the company?

A. I think it a very low rate.

Q. The depreciation was as much as that for that year?

A. Yes, sir.

Q. The actual depreciation?

A. Yes, sir.

Q. Now, if you take your balance of $7,960.51 as a state-
58 ment of the net earnings of the South Chicago City Railway for that year and capitalize that at 6 per cent., how much would you have as principle for which that was a return at 6 per cent.?

A. $132,675.00.

Q. Now, if you were to take 70 per cent. of that amount of $132,675.00, what would you have?

A. $92,872.50.

Q. Take one-fifth of that, how much would you have?

A. $18,574.50.

Q. Now, if that sum of $18,574.50 is taken as the assessed value of the capital stock of the South Chicago City Railway Company on April 1, 1900, are you able to give the rate of taxation upon which the taxes of the South Chicago City Railway Company were computable for the year 1900?

A. I am.

Q. What was that rate?

A. The rate of the Town of Hyde Park for the year 1900 was 7.867.

Q. Was this railroad of the South Chicago City Railway Company situated in Hyde Park?

A. It was and it is.

Q. Its principal office?

A. Its principal office and place of business is in the Town of Hyde Park; we have of course the city office.

Q. Well, the taxes have been collected by the Town Collector of the Town of Hyde Park in the past?

A. They have, yes.

Q. Now, taking the sum of $18,574.50 as the assessed value of the capital stock, including the franchise of the South Chicago City Railway Company, computing the tax on that at the rate that you gave as the rate of taxation for Hyde Park for the year 1900,
59 can you state how much the amount would be?

A. Yes, I can.

Q. How much is it?

A. The amount is $1,461.25.

Q. Do you know whether or not the South Chicago City Railway Company paid a tax for the year 1900 upon its capital stock?

A. I do.

Q. What was the tax?

A. They paid a capital stock tax.

Q. Do you know how much it was?

A. I do.

Q. How much was it?

A. We paid a capital stock tax for the year 1900 of $3,933.50.

Q. That is, the South Chicago City Railway Company paid that tax on its capital stock for that year?

A. The South Chicago City Railway Company paid that amount as a tax on its capital stock for the year 1900.

Q. In addition to that, did it pay a tax upon its tangible property?

A. It did.

Q. By whom was the tangible property assessed for that year, the local assessor?

A. The local assessor, the Board of Review, and the State Board of Equalization, they were all involved.

Q. The Board of Local Assessors assessed the tangible property and that was reviewed by the Board of Review and increased?

A. Or reduced or reviewed, it passed under the hands of the Board, it was passed on by them and then was equalized by the State Board?

Q. And then the South Chicago City Railway Company
60 paid this tax on its tangible property as so equalized?

A. It did.

Q. And that was in addition to the tax that you spoke of, that it paid upon its capital stock?

A. That was in addition to our capital stock tax.

Q. Did the South Chicago City Railway Company also pay a tax upon any other property, real estate?

A. It paid a tax on its real estate.

Q. On lots and lands other than its railroad?

A. On lots and lands other than its capital stock and personal property.

Q. Or its railroad?

A. Yes, sir.

Q. In the making of the earnings that you spoke about, which amounted gross in that year to $209,222.85, was there employed by the complainant, the South Chicago City Railway Company all this property, the tangible property which it had, upon which it paid taxes, as well as its capital stock other than its tangible property, did it employ its tangible property in its business, in making those earnings?

A. It did.

Q. That is, the use of the tangible property of the company was devoted by the company for that year to the accretion of these earnings?

A. It was.

Q. Did it get any other revenue out of its property than is included and such as is included in these gross earnings of $209,222.85?

A. It did not.

Q. Then, Mr. Gaither, if the sum of $7,960.51 which you gave as the net or resultant earnings after deducting operating ex-
61 penses, replacements and depreciation, being capitalized at six per cent., and that being estimated to be the fair cash value,

I mean that the sum so arrived at being estimated to be the fair cash value of the capital stock of this company, and 70 per cent. of that cash value being taken as the equalized cash value for the purposes of taxation, and one-fifth of that being taken as the assessed value of the capital stock, and upon that assessed value the tax for the year 1900 be extended at the rate for that year, the amount of the taxes you say upon that amount for that year would be the sum of $1,461.25?

A. Yes, sir.

Q. Well, in fact the complainant, the South Chicago City Railway Company, paid the taxes upon its capital stock for that year to the amount of $3,933.50?

A. It did.

Cross-examination.

By Mr. SHEPARD:

Q. What was the tax paid by the company on the assessment of its personal property by the local assessors?

The WITNESS: Do you mean the real estate?

Mr. SHEPARD: No, the personal property.

A. $1,315.39.

Q. And your tax on real estate?

A. The taxes on real estate amounted to $1,159.16.

Q. What was the capitalization of your company April 1, 1900?

A. $1,603,800.00.

Q. Did your company pay a dividend in 1900?

62 A. It did not.

Q. What is your fiscal year, Mr. Gaither?

A. March 31st it ends; the year begins April 1 and ends March 31.

Q. The data that you have given here applies to the year ending March 31, 1900?

A. It does, yes, sir.

Q. Did you pay a dividend in 1900?

A. We did not.

Q. What were the gross receipts for 1901?

A. I do not remember.

Q. Do you remember what your net receipts were, or the gross earnings?

A. I have not any of that data here, I cannot tell you.

Q. What do you mean by gross earnings?

A. All the money the company takes in.

Q. You do not know what your gross earnings were for 1901?

A. No, sir.

Q. Was there a surplus over the expenditures for 1901?

A. I cannot tell you that, I am not aware of that.

Q. The gross earnings that you speak of, Mr. Gaither, include all the receipts of the company from all sources?

A. Yes, sir.

Q. What are your sources of earnings and receipts?

A. Passengers that are carried on street cars.

Q. Nothing else except fares of passengers?
A. There are some rentals for advertising space in the street cars, yes, sir.
63 Q. Anything else?
A. Rentals of special cars.
Q. Anything else outside of street car service?
A. There is some little rental from fruit stands.
Q. Any real estate rented?
A. That is real estate rented it amounts to $400,000 a year, I think.
Q. Do you own any vacant real estate?
A. We do.
Q. How many lots?
A. I do not remember the exact number of lots, there are five lots in one place on Ewing Avenue attached to the old barn near 100th Street.
Q. Do you know what the value of your vacant real estate was on April 1, 1900?
A. I can only give the valuations fixed by the tax receipts.
Q. You have no personal knowledge of the value of your vacant real estate?
A. It is unmarketable, that is as much as I know, there is no call for it.
Q. Are you holding it in the market for sale?
A. We are. We acquired it for the purposes of the railroad but these purposes not requiring it, we have it for sale.
Mr. GILBERT: You have some for sale, you say?
The WITNESS: Yes.
Q. Your operating expenses here of $156,779.13, what is that made up of?
A. Of the expenses of keeping the road going, such as car repairs, generation of power, fuel consumption, pay of conductors and motormen, repairs of cars, repairs of motors, repairs to track, and iron.
Q. That includes then all of your running expenses, in-
64 cluding the repairs made on the road and on the property of the company during the year?
A. Except extraordinary repairs.
Q. What is this item of replacement made up of?
A. That is for replacement of machinery, for street paving, replacement of tracks.
Q. Can you give the items that enter into that item of $3,946.21?
A. Yes.
Q. Just read them off, will you?
A. One is an item for air compressor for generator cleaning.
Q. How much is that?
A. $96.40.
Q. Are there very many of those items?
A. There is one of that item.
Q. I mean all together of those items?
A. 15 or 20.
Q. Was this air compressor to replace another one? or was it a new one?

A. No, it was a cleaner, like buying a broom for cleaning.
Q. Was it to replace any other like it?
A. It was in the nature of a betterment.
Q. What is the next item?
A. Maguire, tracks replacement.
Q. How much?
A. $2,425.50.
Q. Are those trucks to put on cars?
A. To put under cars, to replace old ones worn out.
Q. How many cars were re-trucked in this manner?
A. I don't know, nine or ten.

Q. What is the life of a fair truck considered?

65 A. I cannot tell you. We have been operating for ten years.

Q. Do the trucks wear out before the car does?
A. Yes, the service on a truck is much harder than on a car, it tears to pieces.
Q. You consider the life of a truck about ten years, did you say?
A. Yes.
Q. Then about one-tenth of the cost of those trucks would probably fall in the year that you have given in your answer?
A. No, for the money was all spent.
Q. I know you purchased them, but it was one-tenth of the value?
A. We did not get one-tenth of them in each of the years, we bought them.

Mr. MILLER: One-tenth of the trucks replaced each year, isn't that it?

Mr. SHEPARD: You have got an item here for replacement and one for depreciation; I am just trying to find out how you distinguished between the two and how they merge into each other as they do.

Mr. MILLER: He can give you the items of replacement and you can see.

Q. What is the next item?
A. Motor dryer.
Q. What is a motor dryer?
A. Well, it is a machine for hot water to dry off the motors.
Q. Was that a new machine your company put in?
A. It was in the nature of a repairing machine.
Q. What did it cost?

A. $135.05.

66 Q. Did it take the place of any other machine used for the same purpose?

A. It was intended to replace the slow action of the atmosphere in drying the machines.
Q. Then it was a new machine you put it?
A. It was a device for facilitating the drying.
Q. It did not replace any other similar machine, or any other machine?

A. It was in the nature of a betterment, to perform the same function.

Q. What is the next item?

A. Alignments car.

Q. What is that?

A. That is an old car that is fixed up, a repair car.

Q. Fixed for what use?

A. So that the men could get at the line of wire and fix it up.

Q. What was that item?

A. $133.00.

Q. What was the next item?

A. It is for fenders.

Q. How much?

A. $750.06.

Q. You had not used fenders before that, had you?

Q. Yes, I think we had; I think we commenced to put those on the year before.

Q. Are these fenders purchased this year included in this item here to replace any similar device?

A. No, they were in the nature of a betterment, supposed to be.

Q. What is the next item?

A. Steam railroad crossings replaced.

Q. How much was that?

A. $10,598.32.

67 Q. You say steam railroad crossing replaced?

A. Yes, sir.

Q. What was the occasion of that?

A. The wearing out of the old railroad crossings.

Q. How many, one or more?

A. Oh, I don't know, there was quite a number.

Q. What did you put in, new rails, and new bed?

A. A railroad crossing is built up work, this work is done by firms that make a specialty of it, it is put in where either street cars or steam railroad cars cross each other, it is separate and apart from the street work, this is what is called special work.

Q. Was that occasioned by the development of the steam railroads or by the development of your own road?

A. By neither, it was to replace old crossings at the same point that were worn out.

Q. How long do these railroad crossings last?

A. It depends altogether on the service on them.

Q. It depends also largely, doesn't it, on the character of the work?

A. Yes.

Q. And the construction?

A. Yes, some work may last better than other work.

Q. How did the character of this crossing compare with the previous one, the one which it replaced?

A. Well, that would have to be developed in time as to how they compared, as to the amount of service we get out of them.

68 Q. Well, how do they compare in cost then?

A. I do not think they cost as much, I am not sure about the prices though at present.

Q. Would you put this wholly in the class of replacements? Or partly in the class of replacements and partly in the nature of a betterment?

A. This is no betterment at all, it was nothing more than a replacement which would have been charged out, if earnings had been sufficient, as a repair account. It was just held in this shape to see if the earnings would not rise to meet it during the year.

Q. What is the next item, Mr. Gaither?

A. Paving, that is for paving and raising Superior Avenue.

Q. How much?

A. $13,690.39.

Q. Are both of these items special assessments or what?

A. Why, I will tell you——

Q. Either one of those are in the nature of replacements, are they?

A. The work was ordered to be done, the railroad was under obligations to pave the street when the rest of the street was improved.

Q. Neither of these were in the nature of replacements, were they?

A. No, betterments.

Q. Both of them?

A. Well, that raising Superior Avenue was in the nature of a repair; we have not the separate cost of that.

Q. Do you know what that cost?

A. The total cost was $13,690.39.

69 Q. Do you know what proportion of that was for raising this?

A. No, I do not, I have not the separate items.

Q. Can you give us an idea?

A. No, sir.

Mr. MILLER: Can you get that and state?

The WITNESS: Yes, I can get that.

Q. What is the next item?

A. Purchase of motors.

Q. How much?

A. $9,213.08.

Q. Were these to take the place of worn out motors?

A. They were, yes, sir.

Q. Or were they additional motors put onto the road?

A. They were not additional, they were to replace motors.

Q. Did your road add any additional cars to your equipment?

A. No.

Q. It did not run any additional cars at all?

A. No, the service remained the same.

Q. What is the next item?

A. Fire protection, $112.95.

Q. What is that?

A. I cannot tell, I think it was either for hand grenades or small chemical charges.

Q. Were they to take the place of any other like appliances?
A. No, that was additional protection.
Q. What would you class that as, a betterment?
A. As a betterment.
Q. How much was that?
A. $112.95.
Mr. MILLER: Is that something that wears out?
The WITNESS: I don't know. Chemicals do not evaporate, but water will rust the metal. The chemicals do not evaporate
70 till they are in use.
Mr. MILLER: Supposing they are in use, do they have to be replaced?
The WITNESS: That I could not say.
Q. What is the next item?
A. Tool car for workmen.
Q. How much?
A. $108.00.
Q. That was necessary for the operation of the road?
A. That was necessary for the operation of the road.
Q. That would be a replacement, an expense at any rate?
A. That would be an expense, yes.
Q. What is the next item?
A. Controllers, new controllers.
Q. How much?
A. $657.95.
Q. What are those?
A. Those are mechanisms at each end of the car to throw the current on and off.
Q. Are they improvements and additional equipment to the cars?
A. No, these are in the nature of repairs and replacement of worn-out motors.
Q. Wholly to replace wornout controllers?
A. Yes, sir.
Q. What is the next item?
A. Truck fittings, $294.30.
Q. What are those?
A. They were intended to make more useful some old trucks, they were in the nature of replacements.
Q. The next item.
A. Sand boxes $9.45.
Q. The next one.
A. What is called a "Y", a short piece of track to facilitate the movement of cars.
Q. How much was that?
A. $579.35.
71 Q. That is wholly betterment, is it not?
A. Well, it is in the nature of, is to facilitate the handling of cars.
Q. What do you call it?
A. It is called a "Y," it is a piece of track put in.
Q. That is a new Y your company put in, was it?

A. Yes, sir.

Q. You would not call that repairs, nor expense, you would call that betterment of your property, wouldn't you?

A. Yes, I presume so, it would be——

Q. Like adding additional mileage on your line of road?

A. It is not in the nature of an extension.

Q. Not in the nature of an extension?

A. It is simply to facilitate the handling of cars.

Q. It would be treated the same as construction would be treated and charged to the same expense that cost of construction would be charged when the road was originally built, the main line?

A. It is not capitalized, we could not capitalize it.

Q. It would be though?

A. It might have been capitalized in the original capitalization but it would not be at this time; it would be treated in the nature of expenditure for betterment.

Q. For a betterment?

A. Repair or betterment.

Q. This was not then, this particular one was not a repair because there was nothing to be repaired?

72 A. These betterments are sometimes pretty difficult to discriminate, in the operation of the road.

Q. Would you designate it now as a betterment?

A. Call it a betterment.

Q. What is the next item?

A. Copper feeder $663.41.

Q. What was that?

A. That was a piece of copper wire; I don't know whether it was to replace some stolen wire or not.

Q. It took the place of something else?

A. Yes, sir; I cannot say for this particular item whether it was to replace other copper being stolen, but it was for the transmission of current on the line.

Q. Would you call that a betterment or a repair?

A. Repair, I should say that belonged properly to repairs.

Q. What is the next item?

A. That is all. All these items are properly chargeable to profit and loss.

Mr. SHEPARD: I ask that the last part of that answer or statement of the witness be stricken out as not responsive to any question.

Q. How do you make this item of $5,016.00 which you have designated for depreciation?

A. I took the valuation of personal property as found by the Board of Equalization, $83,600.00.

Q. You took what part of that?

A. That part; that is what they found as the value of the personal property.

73 Q. How did you happen to take that particular part?

A. That is all there is of it, the personal property assessment is made by the State Board of Equalization.

Q. How did you come to get $5,016.00?
A. Is not that six per cent. of $83,600.00?
Q. That is what I am trying to get at. You took six per cent. of it then?
A. Yes, sir.
Q. Six per cent. of $83,000.00?
A. $83,600.00.
Q. Did you take the assessment as made by the State Board of Equalization?
A. $83,600.00.
Q. What was the $83,600.00?
A. That was the valuation of the State Board of Equalization on the personal property?
Q. And capital stock?
A. No, sir. That is on the personal property.
Q. What was the assessment by the local assessors upon the company's personal tangible property, do you recollect?
A. $76,000.00.
Mr. MILLER: And the State Board added 10 per cent.?
The WITNESS: The State Board added 10 per cent. and on that we paid our taxes.
Q. By taking six per cent. of that amount gives this $5,016?
A. Yes.
Q. So you paid no dividend upon the capital stock in 1900?
A. No, we did not.
Q. Do you know what surplus you carried over to 1901?
A. To 1900? We carried over no surplus, there was a deficit.

74 Q. What is the amount of your outstanding bonds, the bonded debt of your company?
A. It is $1,563,000.00.
Q. Where does your road run, Mr. Gaither?
A. It runs from 63rd Street and Madison Avenue to South Chicago, and it runs from 92nd Street, a branch goes east to the Indiana state line at 106th Street, a branch goes south to 106th Street on the west side of the river. There is a cross line on 106th Street to the Indiana state line.
Q. Your road operates and is constructed largely through a yet undeveloped part of the city, isn't it?
A. Yes, sir.
Q. Was your road constructed and is it operated under a single ordinance right covering the whole road?
A. Well, there are different ordinances granted at different times.
Q. Does the main part of it, the greater part of it, the main line and greater part of the road which was constructed, does it operate under a single ordinance right?
A. The main line of it is operated under one ordinance.
Q. What time is specified in your charter from the state as the duration *from* your corporation, do you know?
A. Ninety-nine years.

Q. How long a grant have you from the municipalities through which your road is constructed and is operated?

A. I think they expire in 1915 and 1916.

Q. They have yet 17 to 18 years to run?

75 A. No, that would be 13 and 14. I think I can correct that; the last ordinance was granted to expire in 1915, granted in 1895.

Q. What year was your main ordinance covering your main line granted?

A. I think that was extended, I think that expires in 1915, that is my recollection.

Mr. SHEPARD: That is all.

Redirect examination.

By Mr. MILLER:

Q. Mr. Gaither, you spoke about some item in this list of items of replacements for street improvement, about street paving?

A. It was street paving.

Q. Is that the paving of the middle portion of the street or the whole of the street, or what?

A. The paving of the middle portion of the street on the railroad's right of way.

Q. That was required by what?

A. By the conditions of the ordinance that requires the company to pave it.

Q. Was that the ordinance by which the privilege was granted by the municipality to the company?

A. Yes, sir.

Q. What was the kind of street railroad that your company has, what is the motive power?

A. Electric.

Q. Is there anything in the construction, maintenance or operation of the road other than the requirement of the municipal ordinance that requires the paving of the middle portion of the street?

A. There is not.

76 Q. There is nothing in the conditions of your road that would require that?

A. There is not.

Q. This is one of the burdens that was imposed on the road by the municipality, is it?

A. It is.

Q. Is it an improvement in any way to your road, or a betterment?

A. It is not.

Mr. SHEPARD: I object to the question for the reason that it asks for a conclusion of the witness. The witness can state the facts.

The WITNESS: Those are the facts.

Mr. SHEPARD: The witness should confine himself to a statement of the facts.

Q. Does this in any way afford to the railroad any facility or con-

venience in the maintenance or operation of the road, this paving of the middle of the street?

A. None whatever, this is only an additional burden and expense.

Q. In what street was this filling and raising of grade you spoke of?

A. Superior Avenue.

Q. You have stated in your cross-examination, to which Mr. Shepard objected, that all these items that you mentioned here should be charged to profit and loss. What is the fact about it?

A. They were charged to profit and loss.

Q. On the books of your company?

A. Yes sir.

Mr. MILLER: I guess that is all.

77 Recross examination.

By Mr. SHEPARD:

Q. The street was paved in the summer of 1899, was it not?

A. Yes.

Q. And the street was raised—no, the grade was raised in the summer of 1899?

A. I could not speak so positively about that. We had laid our tracks at the grade given us by the City Engineer, and there was so much water there that we put them up to get out of the water; and whether that was done in the Spring of 1900 or 1899 I could not say.

Q. It would have to be done before the first of March, 1900.

A. Possibly not; it may have been depressed; we used cinders.

Signature waived by agreement of counsel.

78 10:00 a. m. Wednesday, May 14, 1902.
Parties met pursuant to notice.
Present: Mr. Miller; Mr. Shepard.

WILLIAM L. SOUTHWORTH, called as a witness on behalf of the defendant, being first duly sworn, was examined in chief by Mr. Shepard and testified as follows:

Q. What is your name?

A. William L. Southworth.

Q. Where is your residence?

A. 536 Ogden Street, Chicago.

Q. Your occupation?

A. Clerk in the County Clerk's office.

Q. How long have you been a clerk in the County Clerk's office?

A. Fifteen years.

Q. The County Clerk of Cook County?

A. Yes, sir.

Q. Mr. Southworth, the principal place of business and office of the South Chicago City Railway Company is in the Town of Hyde Park, Cook County, Illinois, is it not?

A. Yes, sir.

Q. What was the rate by which the taxes were extended for the Town of Hyde Park for the year 1900?
A. 8.36 7/10 in Hyde Park; Hyde Park, Lake and South Chicago all have the same.
Q. By what rate were the taxes extended by the County
79 Clerk on the omitted assessment in the Town of Hyde Park?
A. 7.37?
Q. On the one hundred dollars?
A. Yes.

Mr. SHEPARD: That is all.
Signature waived by agreement of counsel.

[Endorsed:] South Chicago City Ry. Co. *vs.* Baird *et al.*—Evidence taken 5/14/02 before Master Bishop.

80 2 p. m., FRIDAY, *May* 23, 1902.

Parties met pursuant to notice.
Present: Mr. Miller; Mr. E. S. Smith, Assistant Attorney General; Mr. Shepard.

OTHO S. GAITHER, recalled for further examination on behalf of the complainant, was examined in chief by Mr. Miller and testified as follows:

Q. Your name is Otho S. Gaither?
A. Yes, sir.
Q. You reside at 4435 Champlain Avenue, Chicago?
A. At 4455 Champlain Avenue, Chicago.
Q. You are the secretary of the South Chicago City Railway Company, complainant in this case?
A. Yes, sir.
Q. How long have you been secretary of the South Chicago City Railway Company, several years?
A. Oh, yes, ten years.
Q. Now, taking the calendar year 1900, are you able to state whether or not there were any net earnings in the hands of the South Chicago City Railway Company for that year?
A. I am.
Q. What was the fact?
A. There were not.

Mr. MILLER: I think that is all, Mr. Shepard.
Mr. SHEPARD: I shall have to interpose an objection to the examination just made by Mr. Miller on the ground that he has
81 asked his witness to state conclusions, and he has stated conclusions.
Mr. MILLER: No, I do not think so, I think that is a fact.
Mr. SHEPARD: That may be a correct statement but it is for the Court to determine or the Master to determine from the figures what the facts are, from your receipts and expenditures what were the net earnings of your company.

Mr. MILLER: You can call that out on cross-examination, all the details you want to. We rest.

Mr. SHEPARD: I move that the answer be stricken out as improper and incompetent, being a statement of a conclusion by the witness, not one question calling for a statement of facts.

Direct examination resumed by Mr. MILLER:

Q. Will you please state the amount of taxes which were paid by the South Chicago City Railway Company, the complainant herein, for the taxes of the year 1900? Do you know and can you state?

A. I know and can state, yes.

Q. You may state what they were, the amount of taxes so paid.

A. $6,408.05.

Q. They were the taxes for the year 1900, which were paid by the South Chicago City Railway Company?

A. They were the taxes assessed for the year 1900.

82 Q. And paid?

A. They were subsequently paid.

Q. Well, they had been paid prior to the filing of the bill?

A. They had been paid prior to the filing of the bill, yes sir.

Mr. SHEPARD: Some time in 1901?

The WITNESS: Yes.

Q. About the regular time when the taxes are collected by the Town Collector?

A. Yes, sir.

Q. Were they paid to the Town Collector of Hyde Park?

A. They were paid to the Town Collector of Hyde Park.

Q. Do you know what the true rate of taxes for the year 1900 was in the Town of Hyde Park?

Mr. SHEPARD: I object to that question.

A. Yes.

Q. What was it?

Mr. SHEPARD: I object to the question.

A. Outside of the Drainage District it was——

Mr. SHEPARD: I object to that.

Mr. SMITH: It is a matter of record, what the rate is.

Mr. MILLER: It is a matter of computation. Go on, Mr. Gaither.

A. (Continuing.) The rate was 7.867.

Q. Per cent.?

A. Per cent. on the assessed value, as equalized.

Mr. MILLER: I think that is all.

83 Cross-examination.

By Mr. SHEPARD:

Q. Did you say outside of the Drainage tax?

A. That was the rate outside of the Drainage District, in Hyde Park.

Mr. SHEPARD: I would like the Master to pass upon my motion to strike out the answer of the witness as incompetent and improper, and pass upon the question whether or not he should show their gross earnings and as to the proper deductions for expenses and so forth, in order to arrive at the true net earnings of the company, if any, for the year 1900, in accordance with the rule laid down by the court for the purposes of this reference. The only question asked was whether or not the company had any net earnings.

Mr. MILLER: I asked whether or not there were any net earnings.

Mr. SMITH: He states there were no net earnings for the year 1900. I read from the order: "It is further ordered that in ascertaining the true net earnings of complainant for its said fiscal year a deduction from the gross earnings of complainant for that year shall be made of six per cent (6%) of the value of its tangible personal property in that year, also of the amount of additional taxes for the year 1900 which should be paid by complain-
84 ant as ascertained under this order of reference."

Now, I take it that order is for the Master to make the deduction from the gross earnings of the complainant to ascertain what the net earnings are, if there are any, that it is for the Master to ascertain and not for the witness to state, and we submit if this is done, the counsel are to offer any evidence for the Master to make a report on the earnings of the South Chicago City Railway Company it must be evidence from which the Master can draw his conclusions, and not evidence under which the Master is obliged simply to take the conclusions of the witness. The Court has defined what the Master shall do to ascertain the net earnings, and it is upon the company to furnish to the Master the data from which the Master can make that computation. I ask that Mr. Shepard's motion be allowed.

The MASTER: Your question is as to the character of the testimony, whether it establishes the facts?

Mr. SMITH: Yes. The witness simply answers there were no net earnings, and I say that he must show the facts, state the gross earnings of the company and let the Master determine whether or not there were any net earnings. It is purely a conclusion, solely and absolutely; what he might construe to be net earnings your Honor might not.

The MASTER: I think the objection is well taken, because
85 for the purposes of the examination there is nothing before the Master that he can make use of in determining the proposition submitted under the order of the Court.

Direct examination resumed by Mr. MILLER:

Q. Are you able to tell, Mr. Gaither, and if so you may state, what the amount of the gross earnings was for the calendar year 1900 of the South Chicago City Railway Company, and also state in that connection what the amount of the operating expenses for the same period, interest on the bonded debt of the company, replacements, and also what 6 per cent. of the value of its tangible personal

property amounted to, taking as the value of the tangible personal property for the purpose the equalized assessed value of that property for that year as made by the Board of Assessors and as equalized by the State Board of Equalization.

Mr. SMITH: I object to that question. I have no objection to the first part of it, to his stating the gross earnings, the expenditures, the operating expenses, the expenditures for interest on the bonded indebtedness.

Mr. SHEPARD: I object because it includes the interest on any form of indebtedness. I understand he capitalizes the balance.

Mr. SMITH: There are three or four questions in one, and when he answers those I will make my objections to the other
86 part of it.

The MASTER: I think you better take up those items separately, Mr. Miller.

Q. Are you able to state, and if so, you may state, what the amount of the gross earnings of the complainant, the South Chicago City Railway Company was for the calendar year 1900?

A. They were $213,103.34.

Q. Are you able to state what the amount of the operating expenses for that period were?

A. I am.

Q. They were what?

A. $138,751.47.

Q. Was that amount paid by the complainant company for the operating expenses for the calendar year?

A. They were.

Q. Are you able to state the amount of interest paid on the bonded debt?

A. I am.

Mr. SMITH: Objected to as improper and incompetent.

Q. How much was that?

A. $78,150.00.

Q. Are you able to state how much the amount paid out by the complainant company for replacements for that year was?

A. I am.

Q. How much?

A. $30,180.28.

Q. Are you able to state how much 6 per cent. of the value of the tangible personal property of the company in that year amounts to, and for that purpose you may take the value of the tangible personal property to be the assessed value as fixed by the local assessors for that year and as equalized by the State Board of Equalization?

A. I am.

87 Q. Are you able to do that?

Mr. SMITH: I object to the question.

Mr. MILLER: What is the objection?

Mr. SMITH: The computation is referred by the court to the Master, for the Master to make, and the court gives the Master

the basis on which to make his computation. Now, I ask that the witness furnish the data and that the Master do the computing.

Q. Are you able to state how much the value of the tangible personal property of the complainant company in that year was as fixed by the assessments of the local assessors, equalized by the State Board of Equalization?

A. I am.

Mr. SMITH: I object to the question as immaterial, what it was as fixed by the assessors. The order is that the computation be made upon the value of the property.

Mr. MILLER: It has been contended by the counsel for the defendant here in these cases, if I understand them correctly, that the basis of the value which should be taken to comply with this order should be the assessment of that order, or else it should be if the complainants in any case disputed that value, it should be upon independent proofs; that for the purpose of taking the value of the property, the amount fixed by the assessors, the assessing bodies, which would be in this case the assessments of the local assessors as equalized by the State Board of Equalization.

88 The MASTER: Is there any question in regard to the assessment?

Mr. MILLER: Oh, no.

Mr. SMITH: There is question in regard to the value.

Mr. MILLER: There is no question as to the amount of the assessment.

Mr. SMITH: The assessment of the State Board of Equalization shows what the equalized assessed value is but as to the value of the property, if this witness is to testify about it, he should testify as to the value of it.

Mr. MILLER: He for convenience gives to the Master his data.

Mr. SMITH: We submit that that is no data within the meaning of the order of the court.

Mr. MILLER: The value as fixed by the assessors on which the Town Collectors collected their taxes, that is a pretty good valuation which really according to the finding of the court should be increased, the valuation as fixed by the Assessing Board should be regarded as 70 per cent. really.

The MASTER: Your question is as to the values fixed by the assessors?

Mr. MILLER: Yes, sir.

The MASTER: And upon which the assessment was made?

Mr. MILLER: Upon which the taxes were extended.

89 The MASTER: I do not see any objection to that. It is susceptible to further proof I suppose, it is only a question in regard to the correct amount. You may go on, Mr. Miller.

Q. You may state, Mr. Gaither, what that full value was as fixed by the Assessing Board and equalized by the State Board of Equalization.

A. $83,600.00.

Mr. SMITH: $83,600.00?

The WITNESS: $83,600.00 was the value of the personal property as equalized by the State Board.

Mr. SMITH: Does that include the capital stock of the company?

The WITNESS: That does not include the capital stock assessment, that is the value of the tangible personal property.

Mr. SMITH: Have you the tax bill?

The WITNESS: I have the tax bill, a duplicate of it, yes, sir, it is not receipted.

Mr. SMITH: Will you let me see it, you have no objection?

The WITNESS: No, I have no objection to your seeing it. (Handing Counsel said paper.)

Q. Now, have you computed the amount of 6 per cent. of that assessed valuation?

A. Yes, sir.

Q. How much is that assessment?

A. $5,016.00.

Mr. MILLER: I think that is all.

90 Mr. SHEPARD: That is all.

Mr. MILLER: I think that is all our matter.

Mr. SHEPARD: We simply desire to show that the State Board of Equalization made a horizontal raise of 10 per cent.

Mr. MILLER: That is admitted, that is the fact, isn't it?

Mr. SHEPARD: Yes, to apply in all of the cases, that the State Board of Equalization made a straight raise of 10 per cent. of all the property in the county as equalized between the several counties of the state.

Mr. SMITH: We will offer the proceedings of the State Board of Equalization for the year 1900, and pages 80, 81 and 82 showing the report of the Committee on General Equalization. Table A shows the assessed value, the rate per cent. added and deducted, the amount added and deducted, and the equalized value of each class of property assessed in counties on other than railroad property and Table A on page 82 shows that in Cook County the assessed value of personal property was equalized by adding thereto 10 per cent. of the assessed value. We offer this in evidence, and that makes the record of it, and that will apply to all of the cases.

Which was all the evidence offered or received upon the hearing of the above entitled cause.

91 10.00 a. m., SATURDAY, *May* 24, 1902.

Parties met pursuant to agreement.

Present: Mr. Miller; Mr. Crawford; E. S. Smith, Assistant Attorney General; Mr. Shepard; Julius A. Johnson, Esq.

Mr. JOHNSON: We desire, if the Court please, to offer some testimony this morning as to what was the appropriation, the amount and the items of the appropriation made by the City of Chicago and other municipalities in the year 1900 on which this tax was extended. We desire to show and offer to show

First. Just what was the amount and what were the items of the ap-

propriation bill passed by each municipality in the County that year on which this levy rests.

Then the levying ordinance.

Then we desire to introduce and offer to introduce the warrant or certified copy thereof made by the County Clerk for the collection of this tax of 1900.

This warrant was delivered to the County Treasurer, first to the Town Collectors and then to the County Treasurer or Collector for collection, and we shall offer and do offer to introduce the County Treasurer's books or a summary from the books of the County
92 Treasurer showing the exact amount of the tax from each municipality which was collected in that year, intending thereby to show that each of those municipalities had received already practically and fully more than the tax which they appropriated and levied; in some cases, they have been overpaid; in other cases they have been paid all except a trifling amount; and for that purpose.

I first offer in evidence the appropriation ordinance of the City of Chicago making appropriations for its corporate purposes, and for school purposes, and for library purposes, for the year 1900. This ordinance will be found on page 2809 of the Council Proceedings. It was passed on the 4th day of April, 1900, and reads as follows:

Mr. SHEPARD: We object to the introduction in evidence of the ordinance just suggested and to all of the evidence that has been suggested by counsel for complainant for the purpose for which he has stated it was offered. That goes to questions simply as to whether or not this complainant should be compelled to pay any taxes upon the re-assessment of their property in view of the fact that they claim that the tax levies by the municipalities have been fully or partly met by the taxes paid by other property owners based upon the assessments made in 1900, for 1900.

93 We object to it in the first place because it is not within the scope of the order of reference, your Honor.

In the second place, because it is immaterial to this hearing or to the final hearing in this case.

The first objection it seems to me should be sufficient for this stage of the proceedings, that is in this hearing on this preliminary matter. The order of reference reads: That the court finds that the complainant should pay an additional tax and it is ordered that this cause be referred to Henry W. Bishop, one of the Masters in Chancery of this Court, for the purpose of ascertaining that preliminary payment. "Said Master is directed to ascertain and determine the amount of said additional taxes upon the following basis:" That I take to be the scope of the inquiry. "The full value of the complainant's capital stock and franchises on April 1st, 1900, shall be ascertained by capitalizing the true net earnings of the complainant, in its fiscal year covering April 1, 1900, upon the ratio or basis of six per cent., that is to say, said full value shall be taken to be 16⅔ times said net earnings. This full value shall be equalized by deducting 30 per cent. therefrom, and one-fifth of said equalized value so ascertained shall

be taken as the equalized value upon which complainant should have paid taxes for the year 1900, and upon said amount or equalized assessed value so ascertained taxes at the true rate of 1900, of
94 not to exceed 8.817 per cent. (exclusive of interest and penalties) shall be computed or extended, and from the amount of the taxes so ascertained shall be subtracted the taxes already paid by complainant for the year 1900," etc.

Mr. CRAWFORD: I submit that the most proper way to deal with this situation is to allow us to go on and make our formal proof and to allow that to be admitted subject to the objection and to let the whole matter go before the Court so that the Court can determine whether or not the evidence is admissible and relevant and material. It will take but a little while to prove these things.

The MASTER: The Master is of the opinion that the testimony offered for the purpose for which it is offered is incompetent and irrelevant under the order in this case. I, however, do not desire to prevent counsel from having the record made of the evidence, but this is an intimation of my opinion and the effect it will have on my report. I do not anticipate that the defendants will make a cumbrous record, but that it will be merely a short one and, under the circumstances indicated, the evidence may be for the time admitted and a record made.

Mr. SHEPARD: If this testimony is to go in, we feel that we should introduce testimony as to the value of the stocks and bonds of this complainant, and that will prolong this hearing unnecessarily.

95 Mr. SMITH: I suppose it is understood that our objection goes to all the class of evidence Mr. Johnson stated he intended to offer, under the ruling of the Master?

The MASTER: For the purpose for which it is offered.

Mr. JOHNSON: So you need not interpose further objection in order to maintain the objections.

The heading of this ordinance reads: "An Ordinance Making Appropriations for Corporate, School and Public Library Purposes for the Fiscal Year from January 1, 1900, to December 31, 1900,

Be it Ordained by the City Council of the City of Chicago:

SECTION 1. That the following sums, or so much thereof as may be authorized by law and as may be needed, be and the same are hereby appropriated for corporate purposes of the City of Chicago, and for school and also for library purposes, as herein specified, for the fiscal year commencing January 1, 1900, and ending December 31, 1900:"

Then follow the various appropriations making a total for corporate purposes, the amount appropriated for taxes, $6,693,251.60.

Following that there is one subdivision headed "Interest Account," and those items, there are four or five of them which necessarily will be added to make the total amount for corporate purposes, they are as follows:

96	For payment of interest in city indebtedness...	$900,000.00
	Add 4½ per cent. for loss in collection of tax..	40,500.00
	General Sinking Fund.....	150,000.00
	Add 4½ per cent for loss in collection of tax.....	6,750.00
	River improvement sinking fund.....	60,000.00
	Add 4½ per cent. for loss in collection of tax.....	2,700.00
	School sinking fund.....	50,000.00
	Add 4½ per cent. for loss in collection of tax.....	2,250.00
	Sewerage sinking fund.....	104,000.00
	Add 4½ per cent. for loss in collection of tax.....	4,680.00

Then under the heading of "The Chicago Public Library" the total appropriation is $263,397.00.

The- follows the amount of school taxes, and that is as follows:

New buildings and sites.....	$2,500,000.00	
Parental School buildings.....	200,000.00	
Add loss and cost of collection.....	160,000.00	
Making a total of.....		$2,860,000.00

for building purposes.

Then under the heading "Educational purposes,"

Educational purposes	$7,455,000.00	
Add loss and cost of collection.....	445,000.00	
	7,900,000.00	
Estimated revenue from other sources	750,000.00	
Making a total of.....		$7,150,000.00

97 *Indebtedness.*

Bonds maturing in 1900.....		$59,500.00
Interest due in 1900.....		32,800.00
Bonds maturing in 1901.....		36,800.00
Interest due in 1901.....		29,200.00
		$158,300.00
Add loss and cost of collection.....		7,700.00
Due in settlement with Trustees of that portion of Austin un-annexed on division of property, as per report to be made to City Council.....		29,206.44
Add loss and cost of collection.....		1,460.32
Making Total school tax appropriation.....		$10,206,666.76

I also offer in evidence the following ordinance passed by the City Council of the City of Chicago on the 8th day of October, 1900, and found on page 1158 of the Council Reports:

"The following is the ordinance as passed:

Be it ordained by the City Council of the City of Chicago:

SECTION 1. That the following reductions be made in the ordinance making appropriations for corporate, school and public library purposes for the fiscal year from January 1, 1900, to December 31, 1900, and passed April 4, 1900, and that the heads of departments shall furnish to the City Comptroller at the earliest possible moment the details of the following amounts, showing the specific items to be reduced:" "From Fund for Corporate Purposes"
98 a total of $1,647,500.00. "This ordinance shall be in force from and after its passage."

I also offer in evidence the levying ordinance of the City of Chicago for the year 1900, found on page 49 of City Council Proceedings, passed on the 23rd day of April, 1900, reciting "That the following sums, or so much thereof as may be authorized by law and as may be needed, be and the same are hereby appropriated for corporate purposes of the City of Chicago, and for school and also for library purposes, as hereinafter specified, for the fiscal year commencing January 1, 1900, and ending December 31, 1900."

I will not repeat the items, they are the same as in the appropriation ordinance of April 4.

I now offer in evidence the appropriation ordinance passed for the year 1900 by the County of Cook at its meeting on January 23, 1900, and found on page 157 of its official records for the year 1899-1900, the last clause of which reads as follows: "Total amount to be appropriated" and under that, "Total to be realized by taxation as per resolution $2,481,384.44."

I offer in evidence a certified copy of the tax levy for the year 1900 of the South Park Commissioners in and by which they levied the sum of $611,056.00.

(Said certified copy is in words and figures as follows, to wit:)

99 An Ordinance Concerning the Tax Levy for the Current Year.

Be it ordained by the South Park Commissioners:

SECTION 1. That the South Park Commissioners hereby Specified the Sum of Three hundred Thousand ($300,000.) dollars which this Board estimates as necessary for the payment of the interest on the bonds issued by this Board prior to June 26th, 1885, and for the payment of the principal of such said bonds as are required to be paid during the current year, and that which in addition thereto will be required for the improvement, Maintenance and government of the South Park during the current year.

SECTION 2. That the South Park Commissioners in addition to the sum mentioned in the preceding Section, hereby levied a tax of Forty Thousand ($40,000) dollars upon the property within its jurisdiction to pay the interest as it falls due on the bonds issued under and in pursuance of an "Act" entitled "An Act in Relation to the Worlds Columbian Exposition" approved August 5th, 1890,

and also to pay and discharge that portion of the principal of said bonds required to be paid during the current year, and direct the same to be collected in the manner provid- for in the Collection of other park taxes.

SECTION 3. That the South Park Commissioners in addi-
100 tion to the sum mentioned in the preceding Sections, hereby levies a tax of Three hundred Eleven Thousand and fifty Six ($311,056,000) dollars upon the taxable property embraced in its park district under and in pursuance of an act entitled An Act to Enable Park Commissioners to Maintain and Govern Parks, Boulevards, Drive ways, Promenades and Pleasure Grounds under their control. Approved April 21, 1899, and ordains and certifies that said amount in addition to the Sums mentioned in the preceding Sections, is necessary for the proper improvement governance and maintenance of the Park property under its control.

SECTION 4. That the sum of Six hundred fifty one Thousand and fifty Six ($651,056) dollars Specified to be collected as taxes for the current year be, and the same is hereby levied and assessed upon the taxable property of the Town of South Chicago, Hyde Park and Lake, in the County of Cook and State of Illinois, according to the Valuation of the same as made for the purpose of State and County taxations.

SECTION 5. That the South Park Commissioners hereby certifies to the County Clerk of said County the several amounts above specified aggregating Six hundred fifty one thousand and fifty Six ($651,056) dollars, and the said County Clerk is required to apportion and extend the said Sum of Six hundred fifty one thousand and fifty-six ($651,056) dollars upon the taxable property in the
101 Towns of South Chicago, Hyde Park and Lake in said County of Cook in the next general tax Warrants for the collection of the State and County taxes in said several towns in the manner provided by law.

SECTION 6. That the Secretary is hereby directed to transmit to the County Clerk of said Cook County on or before the second Tuesday of August, A. D. 1900, a copy of this ordinance duly certified by said Secretary as the estimate and certificate required by Law.

STATE OF ILLINOIS, *County of Cook, South Park Commissioners, ss*

I, Edward G. Shumway, Secretary of the South Park Commissioners and Custodian of its records and files, do certify that the foregoing is a true copy of an ordinance adopted by the South Park Commissioners on the 9th day of May, 1900.

In Testimony Whereof, I have hereunto set my hand and the Seal of said South Park Commissioners this Seventh day of June, A. D. 1900.

EDWARD G. SHUMWAY,

[SEAL.] *Secretary of the South Park Commissioners.*

(Endorsed on the back as follows:)
Filed Jun- 14, 1900, Philip Knopf, County Clerk.

102 STATE OF ILLINOIS, *County of Cook, ss:*

I, Philip Knopf, Clerk of the County Court of Cook County, in the State aforesaid, do hereby certify that the attached statements are a true and correct copy of the Tax Levies for the South Park, West Park, West Chicago Bonded Indebtedness, Lincoln Park, North Chicago and Lincoln Park, Lake View for the year A. D. 1900, all of which appears from the records and files in my office.

In witness whereof, I have hereunto set my hand and affixed the seal of said County Court, at my office, in the City of Chicago, in said County, this 17th day of May, A. D. 1902.

[SEAL.] PHILIP KNOPF,
Clerk of the County Court.

103 Mr. JOHNSON: I offer in evidence the resolution of the Town of West Chicago, dated the 27th day of July, 1900 levying the sum of $60,000.00 for its bonded debt.

I offer in evidence certified copy of the resolution of the supervisor of the Town of Lake View levying the sum of $60,000.00 for the improvement, maintenance and government of Lincoln Park for the year 1900. This ordinance is on October 11, 1900.

Another ordinance of the Town of North Chicago dated October 10th for levying the following items for the maintenance of Lincoln Park. They are as follows:

For the maintenance and improvement of the Park, the sum of	152,250.00
For the payment of interest on the Lake Shore Protection bonds, the sum of	25,000.00
For sinking fund, for the payment of said Lake Shore Protection bonds, the sum of	25,000.00
For cost of collection, the sum of	1,000.00
For loss on collection the further sum of	2,000.00
For deficiency on former collections, losses, the further sum of	2,323.44

I also introduce in evidence an ordinance of the West Chicago Park Commissioners dated the 18th day of July, 1900, levying certain rates per cent. under various laws, all of which are set out in detail, amounting to 11½ mills on the property in the West Town of Chicago for that year.

(Said documents are in words and figures as follows, to wit:)

104 To Philip Knopf, County Clerk of Cook County, Illinois:

We, the Corporate Authorities of the Town of West Chicago in the County of Cook and State of Illinois, do hereby certify to you that the following amount of money to be raised by taxation is required for the purpose of meeting the bonded indebtedness of the said Town of West Chicago for the ensuing year.

For West Chicago bonded indebtedness..... $60,000.00

In Witness whereof we hereunto set our hands and caused the Seal of said Town to be affixed hereto, this twenty-seventh day of July, 1900.

JOHN J. McLAUGHLIN,
Supervisor of the Town of West Chicago,
EDWARD B. WARWICK,
Clerk of the Town of West Chicago,
[SEAL.] JOSEPH J. KLEIN,
Assessor of the Town of West Chicago.

(Endorsed on the back as follows:)
Filed Dec. 11, 1900, Philip Knopf, County Clerk.

105 Town of Lake View October 11, 1900—I, Henry Best, Supervisor of the Town of Lake View in the County of Cook and State of Illinois, pursuant to law, do hereby certify that the amount of money to be raised by taxation on property in said Town of Lake View in said County and State, on the assessment for 1900, for the purpose of paying any debt contracted by the Commissioner of Lincoln Park which may fall due during the next year and for the improvement, maintenance and government of said part during the next succeeding year, agreeable to an act of the General Assembly of the State of Illinois Entitled "An Act to fix the boundaries of Lincoln Park and provide for its improvement" approved April 19, 1869, and Amendments thereto, is Sixty Thousand ($60,000.00) dollars.

HENRY BEST,
Supervisor Town of Lake View.

I concur in the above levy
STEPHEN A. BERTRAND,
Supervisor Town of North Chicago.

(Endorsed on the back as follows:)
Filed October 10th, 1900, Philip Knopf, County Clerk.

106 TOWN OF NORTH CHICAGO, *October* 10, 1900.

I, Vincent H. Perkins, Supervisor of the Town of North Chicago in the County of Cook and State of Illinois, pursuant to law, do hereby certify that the amount of money to be raised by taxation on property in said Town of North Chicago in said County and State, on the assessment for 1900, for the purpose of paying any debt contracted by the Commissioners of Lincoln Park, which may fall due during the next year and for the improvement, maintenance and government of said Park during the next succeeding year agreeable to an act of the General Assembly of the State of Illinois, entitled An Act to fix the boundaries of Lincoln Park and provide for its improvement" "Approved April 19, 1869, and Amendments thereto, is One hundred and Fifty-two Thousand Two hundred and fifty ($152,250.00) dollars.

And I further certify that a further sum of Twenty-five thousand

dollars ($25,000.00) is to be raised on said property in said Town, in said County and State for the payment of interest on Shore Protection Bonds.

And I further certify that a further sum of Twenty five thousand dollars ($25,000.00) is to be raised on said property in said Town in said County and State for a Sinking Fund for the payment of said Shore Protection Bonds.

107 And I further certify that a further sum of One Thousand dollars ($1000.00) shall be raised on said property, in said Town in said County and State for cost of Collection, and a further sum of Two Thousand dollars ($2,000.00) for loss on Collection and a further sum of Two Thousand Three Hundred and twenty-three dollars and forty-four cents ($2,323.44) for deficiency on former Collection loss.

VINCENT H. PERKINS,
Supervisor Town of North Chicago.

(Endorsed on the back as follows:)
Filed October 10th, A. D. 1900, Philip Knopf, County Clerk.

Whereas, It is necessary that all the taxes now allowed by law for the purpose of governing, maintaining and improving the parks and boulevards now under the control and management of the West Chicago Park Commissioners, and also for the purpose of paying all other necessary and incidental expenses incurred and to be incurred by said Commissioners in and about the same during the nixed succeeding year, be levied! therefore, be it

Resolved by the West Chicago Park Commissioners, That there should be duly levied by the proper authorities, lawfully con-

108 stituted for that purpose, and under the Acts of the General Assembly of the State of Illinois, particularly mentioned in the certificate hereto attached and marked Exhibit "A," at tax of 11½ mills on each dollars worth of property in the Town of West Chicago, according to the valuation of such property, as made for the purpose of State and County Taxes, for the purpose of enabling said West Chicago Park Commissioners to pay for the government maintenance and improvement of the several parks and boulevards now under the control and management of such Park Commissioners, and for the purpose of enabling said Park Commissioners to pay all other necessary and incidental expenses incurred, and to be incurred in and about and incident to the government, maintenance, management and control of the several parks and boulevards now under the management and control of *the several parks and boulevards and now under the management and control of* said Park Commissioners, and also for paying the interest on all bonds and other indebtedness heretofore lawfully incurred and hereafter to be lawfully incurred by said Park Commissioners pursuant to the laws now in force in this state.

Resolved, Further by the West Chicago Park Commissioners, That the President and Secretary thereof immediately transmit to the Assessor, Supervisor and Clerk of the Town of West Chicago and to the

County Clerk of Cook County, under the seal of this Board, a
109 copy of the foregoing resolutions and the certificate thereto attached.

EXHIBIT "A."

Certificate.

The West Chicago Park Commissioners hereby certify That the several Acts of the General Assembly authorizing the tax estimate by the West Chicago Park Commissioners necessary to be levied for the next ensuing year upon each dollar's worth of the property subject to taxation in the Town of West Chicago, according to the valuation thereof for taxation for State and County purposes, are as follows, namely:

First. ½ mill—"An act to amend the charter of the City of Chicago, to create a Board of Park Commissioners and authorize a tax in the Town of West Chicago, and for other purposes," approved and in force February 27, 1869.

Second. 2½ mills—Also "An Act in regard to the completion, improvement and management of public parks and boulevards and to provide a more efficient remedy for the collection of delinquent assessments" approved May 2, 1873, and amended by an Act approved May 31, 1879 and in force July 1, 1879.

Third. 1 mill—Also "An Act to enable Park Commissioners to improve, govern and maintain the parks and boulevards under their control," approved June 6, 1885, and in force July 1, 1885.

110 Fourth. 1½ mills—Also "An Act to authorize the corporate authorities of towns to issue bonds for the com-letion and improvement of public parks and boulevards, and to provide a tax for the payment of the same," approved June 12, 1891, and in force July 1, 1891.

Fifth. 1 mill—Also "An Act to enable Park Commissioners to maintain and govern parks and boulevards under their control," approved June 17, 1893, and in force July 1, 1893.

Sixth. 1½ mill—also "An Act to authorize the corporate authorities of towns to issue bonds for the completion and improvement of parks and boulevards, and to provide a tax for the payment of the same," approved June 21, 1895, and in force July 1, 1895.

Seventh. 2 mills—Also "An Act to enable Park Commissioners to maintain and govern the parks and boulevards under their control" approved June 17, 1895, and in force July 1, 1895.

Eighth. 1½ mills—Also "An act to authorize the corporate authorities of towns to issue bonds for the completion and improvement of public parks and boulevards and to provide a tax for the payment of the same." approved June 9, 1897, and in force July 1, 1897.

On motion of Commissioner Pavlicek seconded by Commissioner K-opf, that the foregoing resolution be adopted the ayes and
111 noes were called as follows:

Commissioner	K-opf	aye.
"	Litchenberger	aye.
"	Norden	aye.
"	Pavlicek	aye.
President	Suddard	aye.

5 voes aye; declared carried.
Absent—Commissioners Bloxet and Graham.
Approved,

J. W. SUDDARD, *President.*

STATE OF ILLINOIS, *County of Cook, ss:*

I, Ernest G. Schubert, Secretary for the West Chicago Park Commissioners, do hereby certify that the above and foregoing is a true and correct copy of a resolution adopted by the Board of West Chicago Park Commissioners at an adjourned regular meeting, held Wednesday July 18, 1900.

In Witness Whereof, I hereun- subscribe my name and affix the Corporate Seal of said West Chicago Park Commissioners this the 20th day of July, A. D. 1900.

E. G. SCHUBERT, *Secretary.*

Filed July 28, 1900, Philip Knopf, County Clerk.

112 STATE OF ILLINOIS, *County of Cook, ss:*

I, Philip Knopf, Clerk of the County Court of Cook County, in the State aforesaid, do hereby certify that the attached statements are a true and correct copy of the Tax Levies for the South Park, West Park, West Chicago Bonded Indebtedness, Lincoln Park, North Chicago and Lincoln Park, Lake View for the year A. D. 1900, all of which appears from the records and files in my office.

In witness whereof, I have hereunto set my hand and affixed the seal of said County Court, at my office, in the City of Chicago, in said County, this 17th day of May, A. D. 1902.

PHILIP KNOPF,
Clerk of the County Court.

113 WILLIAM R. BURCKY, called as a witness on behalf of the complainant, being first duly sworn, was examined in chief by Mr. Johnson and testified as follows:

Q. Please state your name, residence and occupation.

A. William R. Burcky, Chicago, bookkeeper in the County Treasurer's office.

Q. How long have you been employed in the County Treasurer's office?

A. About twenty years.

Q. Mr. Burcky, have you made up from the County Treasurer's books for the year 1900 a statement of the total amounts extended on the warrants for each year and the total amounts collected under each warrant for each municipality, and a statement showing the

amount uncollected in favor of each municipality from the general tax levy of that year?

A. I have the tax warrant of the 1900 tax, yes, sir.

Q. If you have made up from the County Treasurer's books and brought with you such a statement, you may produce the same. First, I will ask you to state what the amount of taxes is, extended on the warrant for the year 1900 in favor of the City of Chicago?

Mr. SHEPARD: That is objected to as incompetent and immaterial for the reasons already stated.

Q. Mr. Burcky, I will ask you if you have prepared in convenient form a statement of the amount of State, County, Chi-
114 cago City, Chicago School, Chicago Library, South Park, Lincoln Park, Lake Shore Protection Fund, West Park, Boulevard and Park, and Sanitary District taxes extended on such warrants, and the amounts uncollected?

A. Yes, sir.

Mr. JOHNSON: Now, I offer to prove that the books show the following; and I also offer in evidence the statement prepared by Mr. Burcky, as follows:

	Amount on warrant for the year 1900.	Uncollected amounts.	Amount collected by town and county collectors.
State Tax.....	$1,552,346.12	53,302.22	1,499,043.90
County Tax	2,456,064.89	83,807.89	2,372,257.00
Chicago City Tax.....	6,953,716.00	362,160.60	6,691,555.40
Chicago School Tax....	10,026,965.82	333,175.73	261,543.29
Chicago Library Tax...	271,308.00	9,764.71	261,543.29
South Park Tax.....	662,187.01	23,498.82	638,688.19
Lincoln Park Tax.....	223,049.69	8,773.86	214,275.83
Lake Shore Pro. Fund Tax..	51,097.22	1,922.08	49,175.14
West Park Tax.....	641,687.87	13,176.47	628,511.40
Boulevard & Park Tax.....	29,833.43	665.82	29,167.61
Sanitary District Tax..	1,374,047.88	59,562.67	1,314,485.21
Total.....	$24,242,303.93	$849,810.87	$23,392,493.06

115 Mr. JOHNSON: I offer to prove by a certified copy of the objection, of the Title Guarantee & Trust Company, a taxpayer of the City of Chicago, made in the County Court of Cook County, in the matter of the application of Samuel B. Raymond, County Treasurer and *ex-officio* County Collector of Cook County, Illinois, for judgment of sale for delinquent taxes for the year 1900 and prior years, with the judgment of the court thereon, and invalidity of 13.05 per cent. of the corporate tax of said City for said year.

Mr. SMITH: I think we should make a further specific objection to that, that it is not in the record in this case or between any parties to this case.

Mr. JOHNSON: Now, if it be understood that in addition to all the evidence having been excluded, I offer to prove the various ordinances and the testimony figured out on Mr. Burcky's slip which has been disallowed——

Mr. SHEPARD: If your Honors please, just to have this record straight, it may be all right now, I understand the ruling of the Masters to be that the evidence sought to be introduced here upon this subject matter this morning is excluded, and the objection to the introduction of that evidence is sustained?

The MASTER: In effect that is the ruling of the Masters.

116 Mr. SHEPARD: And their offer to prove these various things suggested is disallowed?

Mr. SMITH: As I understand, that is not exactly iy, I understand Mr. Johnson has offered in evidence what he has read here; we object to it, and the Masters sustain the objection.

The MASTER: Yes, so far as he has offered in evidence, the objection is sustained, and in so far as he has offered to prove certain things his offer is also disallowed.

Mr. CRAWFORD: Now, I ask that the Master shall refer that question to the court or direct that the evidence, the offer be returned with their reports so that the equity that is before the Master, the proposition, and rejected may be presented to the court exactly as it was presented to the Master. In other words, we have the right to assume to ask the opinion of the court, and the Masters ought to include the evidence, not cimply the objections to it; and if not, I shall ask the Masters to suspend this proceeding now and refer the matter to the court.

Mr. SHEPARD: I object to any such proceedings at this late day.

The MASTER: It will go to the court just as it has been offered.

Mr. JOHNSON: I would like to ask Mr. Burcky another

117 Question.

WILLIAM R. BURCKY, recalled for further examination by Mr. Johnson:

Q. Mr. Burcky, do these figures of the amount extended on the warrant for the year 1900 include any tax, any item except the revenue for that year?

A. They include whatever back taxes have been brought forward from other years, and that would be an amount in the levy.

Q. So the items of back taxes would be a comparatively small one in each case?

A. I think so.

Q. And in the levy you speak of, would there be any excess?

A. In making the extension upon so many different pieces, there would be of course a fractional amount.

Q. It arises from the extension of fractions?

A. Yes, sir.

Q. These amounts which you have on here under the head of "Amount of Warrant for year 1900," those are the amounts which stand on the warrants themselves?

A. Including the back taxes brought forward.

Mr. JOHNSON: I also offer to prove by a certified copy from the County Clerk of Cook County that the exact amount of taxes on the warrant in favor of each municipality for the year 1900, not including back taxes, is as follows:

118 *Taxes Extended for* 1900.

	Dollars.	Cts.
County	2,431,021	95
City of Chicago	6,889,054	40
Chicago School	9,986,580	94
Chicago Public Library	268,291	12
Sanitary District	1,347,566	29
South Park	656,,450	68
Lincoln Park (Lake View)	60,270	98
Lincoln Park (North Chicago)	160,037	76
Lake Shore Protection Fund (No. Chic.)	50,853	01
West Park	639,577	27
Boulevard and Park	29,681	81
Town Bonds	64,601	34

STATE OF ILLINOIS, *County of Cook, ss:*

I, Philip Knopf, Clerk of the County Court of Cook County, in the State aforesaid, do hereby certify that the attached statement of the total amount of Taxes Extended on the General Warrants for the year A. D. 1900 for the several purposes mentioned is true and correct, all of which appears from the records and files in my office.

119 In witness whereof, I have hereunto set my hand and affixed the seal of said County Court, at my office, in the City of Chicago, in said County, this 17th day of May, A. D. 1902.

[SEAL.] (Signed) PHILIP KNOPF,
Clerk of the County Court.

120 The MASTER: The intention of the Master was simply that counsel should offer to prove, and that that offer should be dealt with by the Master. There was a departure from that method of procedure so that you could get right along on both the offers to prove and the actual proof.

Mr. JOHNSON: The Master understands I offer to prove each one of these ordinances I have offered in evidence. Of course I don't want any of them left out on account of any misunderstanding.

The MASTER: They are all in.

Mr. CRAWFORD: We shall request the Master in his report to fully embrace the different items of evidence that were tendered and rejected, and also the offers to prove that were rejected. I think in order to get it into the record in proper shape there should be a formal offer to prove.

Mr. SHEPARD: I think the record shows you have both offered to prove and we have objected.

Mr. CRAWFORD: Not the whole detailed proposition, which was rejected; I think we can get it in the record in proper shape.

Mr. SMITH: You might offer to prove a certain thing and when you offered your evidence it might prove an entirely different thing.

Mr. CRAWFORD: It might but it won't, so you might try us.

121 (Said certified copy of the objection of the Title Guarantee and Trust Company is in words and figures as follows, to wit:—)

UNITED STATES OF AMERICA.

STATE OF ILLINOIS, *County of Cook, ss:*

Pleas, before Honorable Richard S. Farrand, County Judge of Lee County, presiding as Judge of the County Court of Cook County, at the request and in the absence of the Honorable Orrin N. Carter, sole presiding Judge of the County Court of Cook County, in the State of Illinois, at a regular term of said County Court of Cook County, begun and holden at the Court House in the City of Chicago, in said County and State, on the Second Monday, being the 8th day of July in the year of our Lord one thousand nine hundred and one, and of the Independence of the United States of America, the one hundred and twenty-sixth.

Present: The Honorable Richard S. Farrand, Acting Judge of the County Court of Cook County. Ernest J. Magerstadt, Sheriff of Cook County.

Attest: PHILIP KNOPF, *Clerk.*

Be it remembered that heretofore, to-wit: on the 10th day of July in the year of our Lord one thousand nine hundred and one the same being one of the days of the July Term of the County Court
122 of Cook County, the following objections were filed with the Clerk of said Court in words and figures as follows, to wit:

STATE OF ILLINOIS, *County of Cook, ss:*

In the County Court Thereof.

Obection No. —.

In the Matter of the Application of SAMUEL B. RAYMOND, County Treasurer and *Ex-officio* County Collector of Cook County, Illinois, for Judgment of Sale for Delinquent Taxes for the year 1900, and Prior Years.

Now comes Title Guarantee & Trust Company who is the owner of, and interested in, the real property described in the Schedule hereto attached and made part hereof, by J. D. Adair and Edwin S. Philpot, his attorneys, and objects to the rendition of judgment as herein ap-

plied for against said premises, for the taxes levied thereon, for the said year, and for cause of objection alleges:

1. That the description of said premises as set forth in the judgment sale, redemption and forfeiture record, and the advertised delinquent list upon which this application for judgment of sale is made, is so defective as to render the assessment thereof, for the purpose of taxation for the year 1900, null and void.

123 2. That said description, as set forth, is so defective as to render the levy of the taxes extended against said premises for the year 1900 null and void.

3. The said description of said lands, as set forth in the judgment sale, redemption and forfeiture record aforesaid, is on this application insufficient to sustain a judgment of sale as applied for.

4. The said description of said land, as contained in the advertised list of delinquents, is, on this application, insufficient to sustain a judgment of sale as applied for.

5. A plat of said lands purporting to have been filed for record in the recorder's office of Cook County, Illinois, as document number — in Book 164 maps, page 27, entitled Subdivision by the Assessor of South Division of Chicago of Lots 7 & 8 and E. ½ Lot 6, B. 40, Original Town of Chicago is void in this.

(*a*) It does not particularly describe and set forth the lots or parcels of land surveyed, as required by the statute then in force.

(*b*) The location of the lots into which said lots were subdivided is not set forth in said plat as required by the statute then in force.

(*c*) No description of the tract or tracts, lot or lots, of land out of which said lots in said Assessor's plat were made is given in said plat, as required by the statute then in force.

(*d*) The quantity of land in each of the lots attempted to be made by said Assessor, and particularly as to lots — is not given, as rerequired by the statute then in force.

124 (*e*) The said plat was not certified by the County Surveyor, as required by the statute then in force.

(*f*) The said assessor was without legal authority to make said survey and plat because said plat does not show affirmatively that said Assessor included in his survey and plat only parcels of land each of which embraced less than one-sixteenth of a section, as required by the statute then in force.

(*g*) The said plat is in other respects illegal and insufficient as a platting of said lands for the purposes of taxation.

6. The property has no legal existence for the purposes of taxation.

7. No lien for taxes can attach as against said lands as there described, because they cannot be located and found.

8. The tax levy ordinance passed by the Common Council of the City of Chicago on the 23rd day of April, A. D. 1900, provides for the levying of taxes for corporate purposes, for the year 1900, in excess of two per cent. (exclusive of the amount levied for the payment of bonded indebtedness and interest thereon), upon the aggregate valuation of all the property within the City of Chicago, subject to taxation therein as the same was equalized for State and County taxes for the preceding year.

9. The County Clerk extended the taxes levied for corporate purposes of the City of Chicago for the year 1900 upon the premises herein objected for, at a rate in excess of two per cent., (exclusive of the amount levied for the payment of bonded indebtedness
124¼ and interest thereon), upon the aggregate valuation of all property within the City of Chicago subject to taxation therein as the same was equalized for State and County taxes for the preceding year.

10. The appropriations made by the Common Council by ordinance passed April 4, 1900, provide for the application of money to be raised under the tax levy ordinance aforesaid, to the payment of indebtedness incurred or to be incurred by the City of Chicago, in excess of five per cent. of the value of the taxable property in the City of Chicago, as ascertained by the last assessment for State and County purposes, and the taxes as levied upon the premises herein objected for were extended to include such indebtedness.

11. The Common Council by ordinance passed April 4th, 1900, appropriated money to the payment of indebtedness unlawfully incurred by the City of Chicago, for the payment of which indebtedness the City has levied, and the County Clerk extended, a tax upon the premises herein objected for.

12. The appropriations by the City of Chicago by ordinance passed April 4, 1900, and the tax levy based thereon, are, in respect to the appropriation of money to pay, and the levy of the tax to raise said money, to pay said indebtedness so unlawfully incurred by said City, illegally appropriated, and the said taxes are illegally
124½ levied upon the premises herein objected for.

13. The appropriations by the City of Chicago by ordinance passed April 4, 1900, and the tax levy based thereon, provide for the payment of unlawful indebtedness and the unlawful use of money, in this that the appropriations were made for unpaid bills of prior years, for money not to be applied to lawful corporate purposes, for money to pay interest in excess of the interest payable upon the lawful interest bearing indebtedness of the City of Chicago, and the tax to raise the money to pay said appropriations, was illegally levied upon the premises objected for.

14. The appropriations made by the Common Council of the City of Chicago by ordinance passed April 4th, 1900, and the tax levy based thereon, exceed the amount which could be lawfully appropriated and levied, upon the property subject to taxation in the City of Chicago, as the same was assessed and equalized for State and County purposes for the year 1900, and the said tax as levied upon the premises objected for is illegal and void.

15. The taxes levied upon the premises in question for the corporate purposes of the City of Chicago for the year 1900, are in other respects illegal and void.

16. The estimate of the amount of money required by School purposes, for the year 1900, as passed and certified by the Board
124¾ of Education of the City of Chicago, to the finance Committee of the Common Council of said City, is illegal and void.

17. The appropriation ordinance passed April 4th, 1900, by the Common Council of the City of Chicago, and the levy of the Tax to raise the money to pay said appropriations, are in respect to the appropriations for the School Tax Fund and the levy of the taxes therefor, illegal and void in this.

(*a.*) The amount appropriated for building purposes, and the tax levied therefor, exceed two per cent. upon all the taxable property in the City of Chicago, as ascertained by the assessment for State and County taxes for the year 1900.

(*b.*) The amount appropriated for educational purposes, and the tax levied therefor, exceed three per cent. upon all the taxable property in the City of Chicago, as ascertained by the assessment for State and County taxes for the year 1900.

(*c.*) The amount appropriated for the School Sinking Fund, exceeds the amount necessary for said fund and lawfully authorized therefor.

(*d.*) The appropriation for building purposes, contains items belonging to educational purposes, and the appropriation for educational purposes contains items for building purposes, and both are illegal and void, and the tax levied to pay the same is illegal and void.

18. The appropriations for school purposes for the year 1900, made by the Common Council of the City of Chicago, is in other respects uncertain, illegal and void.

19. The appropriations by the Common Council by ordinance passed April 4th, 1900, for the general sinking fund, are
125 largely in excess of the amount required, and lawfully authorized by law, for that purpose.

20. The valuation of the objector's premises for taxation for the year 1900, is illegal and void.

21. The objector herein hereby offers to pay, not waiving his right to an appeal or writ of error, any part of the taxes aforesaid, which may be found by the Court to have been legally assessed and levied.

TITLE GUARANTEE & TRUST COMPANY,
By J. D. ADAIR & E. S. PHILPOT,
Attorneys for Objector.

Schedule of Property Objected For.

Title Guarantee & Trust Company, Objector.

The South six (6) inches of the East One hundred and eleven and one-half (111½) feet of sub-lot Two*m* (2), and all of sub-lot Three (3) in Assessor's Division of the East Half of Lot Six (6), and all of Lots Seven (7) and Eight (8), in Block Forty (40), Original Town of Chicago.

125½ And afterwards, to wit, on the 7th day of August, A. D. 1901, the following among other proceedings were had by and before said Court and entered of record, to wit:

STATE OF ILLINOIS, *County of Cook, ss:*

In the Chancery Court Thereof.

General Taxes.

Objection No. 75.

In the Matter of the Application of S. B. RAYMOND, County Treasurer and *ex-officio* Collector of Cook County, Illinois, for Judgment of Sale for Delinquent Taxes, &c., for 1900 and Prior Years.

On this day, being one of the days of the July Term, 1901, of this Court, the objections of Title Guarantee & Trust Co. to the application for judgment of sale for delinquent taxes for the year 1900 coming on to be heard, the Court after hearing the evidence and the arguments of counsel, and being fully advised in the premises, finds that the plat entitled;

"Subdivision by the Assessor of South Division of Chicago of "Lots 7 and 8 and East half of Lot 6 Block 40 Original Town of "Chicago," recorded Sept. 19, 1866 in Book 164 of Maps 126 page 27, offered in evidence herein does not comply with Sections 52 and 53 of the Act of Feb'y 12, 1853, nor does said plat comply with Sections 17, 18, 19, 20 and 24 of the Revised Statutes of 1845.

And the Court further finds from the evidence that the objector is estopped to deny the validity of said Assessors' Plat.

And the Court further finds, that the tax levy ordinance of the City of Chicago, passed April 23rd, 1900, as to the following items is invalid.

Contingent Fund.

For contingent and other expenses, for corporate purposes not otherwise hereinafter expressly provided for, including injury claims.....	$40,000.00

Contingent Fund Finance Committee.

For payment of petty injury and damage claims, refunds and other contingent expenses ordered by Finance Committee	5,000.00

Civil Service Commission.

For payment of salaries, stationery and sundry expenses, including unpaid bills of 1897, 1898 and 1899	38,000.00

Payment of 1899 Bills.

For unpaid bills of 1899 Department of Electricity....	28,074.34

City Engineer's Office.

For payment of one years salary to W. D. Hotchkiss, Ass't Engineer, during period of service, May 1, 1898, to May 1, 1899, in United States Army, as per ordinance of City Council, Oct. 17, 1898, page 793 of Proceedings	1,620.00
For restoration and repair of streets (including unpaid bills of 1899	1,433.23

127 Public Buildings.

For unpaid bills of 1898	7,723.58

Seventy Third Street Pumping Station

Horse feed for 1899	1,980.00
For miscellaneous work performed for Board of Local Improvements, other departments and outside depositors. This amount to be in addition to any appropriation made for labor, teaming, material, horse hire, and all necessary expenses for sewer repair work. Payments on account actually collected from depositors and taken up as miscellaneous receipts in the general fund	70,000.00

Election Expense.

For the payment of judges and clerks having served at the April, 1899, election	94,245.00

Fire Department.

For unpaid bills of 1899	18,720.13

House of Correction.

For unpaid bills of 1899	28,032.50

Judgment Account.

For payment of judgments and costs against the city	50,000.00

Legal Expense.

City Attorneys unpaid bills, 1889	5,857.00

Department of Police.

For deficiency in miscellaneous appropriations for 1899	53,153.75
For deficiency in miscellaneous appropriations for 1898	20,000.00

Sundry Claims.

For payment of unpaid bills of 1898 and claims allowed by City Council for which no appropriation
128 has been made as per schedule certified to City Comptroller by finance committee, and for payment of the claim of J. J. Sullivan for sidewalk construction in the sum of $591.88..... 29,138.32

That the following item is valid.

Bridge Construction.

For construction of new bridges to replace those at Ninety-fifth Street, Clybourn Place, North Avenue, Division Street over Canal, Division Street over North Branch, South Western Avenue, and Thirty-seventh Street (Bridge is to be built at an approximate cost of $200,000.00 each) of which sum only $850,000.00 shall be expended during the year 1900, $1,250,000.00 ..... 850,000.00
Less amount of appropriation not to be expended during 1900..... 400,000.00

And that the item for interest in city indebtedness to the extent of $636,469.00 is valid; and as to the amount of $304,031 is invalid; and such invalid items amount to $13.05 per cent. of said taxes levied, and that the objections are sustained to the said City tax to the extent of 13.05% thereof and overruled as to the remainder.

And the Court further finds that the levy by the City of Chicago for the tax for the year 1900 for school purposes is a valid levy and the taxes are collectible as levied.

It is therefore ordered, adjudged and decreed by the Court, that all objections based upon said Assessors plat be and the same are hereby overruled.

That the objections to the City taxes aforesaid, be and the same are hereby sustained to the extent of 13.05 per cent. of said taxes, and overruled as to the remainder, and that all objections to the
129 school tax aforesaid be and the same are hereby overruled.

It is further ordered that judgments of sale are hereby levied against said premises in favor of the People of the State of Illinois for all of said taxes, except said City tax, and as to said City tax judgment be and the same is hereby entered for 86 95/100 per cent. thereof in favor of the People of the State of Illinois, with penalties and costs severally due hereon for the months of May, June and July, 1900.

And it is ordered by the Court that said premises, or so much thereof as shall be sufficient to satisfy the amount of taxes, penalties and costs annexed to them severally be sold as the law directs.

Whereupon, the objector excepted to the finding of the Court and prayed an appeal from said findings to the Supreme Court of the

State of Illinois, which appeal is granted upon the objectors filing a bond in the sum of $250 to be approved by the Clerk of this Court and bill of exceptions within 30 days, and depositing the amount of said taxes &c. as the law directs.

130 STATE OF ILLINOIS, *County of Cook, ss:*

I, Philip Knopf, Clerk of the County Court of Cook County in the State aforesaid, and keeper of the records and files thereof, do hereby certify that the foregoing is a true and correct copy of Certain objections of Title Guarantee and Trust Company filed with the Clerk of said Court on the 10th day of July, A. D. 1901, and a certain order entered of record August 7th A. D. 1901, In the Matter of the application Samuel B. Raymond County Treasurer and *Ex Officio* Collector of Cook County, for Judgment of sale for Delinquent Taxes for 1900 and prior thereto Objections General No. 75. all of which appears from the records and files in my office.

In witness whereof, I have hereunto set my hand and affixed the Seal of said County Court, at my office, in the City of Chicago, in said County, this 17th day of May, A. D. 1902.

[SEAL.] PHILIP KNOPF,
Clerk of the County Court.

Mr. JOHNSON: That is all I have got to offer.

(Endorsed:) Filed June 9, 1902. Marshall E, Sampsell Clerk.
[Endorsed:] South Chicago City R'y Co. *vs.* Baird *et al.* Evidence taken 5/24/02.

131 And on to-wit: the nineteenth day of May, 1906, came the City of Chicago by its solicitors and filed in the clerk's office of said Court its certain Answer in words and figures following to-wit:

132 *Answer of City of Chicago.*

In the United States Circuit Court, Northern District of Illinois.

No. 26169.

SOUTH CHICAGO CITY RAILWAY COMPANY, Complainant,
vs.
SAMUEL B. RAYMOND, County Treasurer and *ex-Officio* County Collector of Cook County; and JAMES BAIRD, Collector of the Town of Hyde Park, Defendants.

Answer of the City of Chicago to the Bill of Complaint of the South Chicago City Railway Company, Complainant, Filed Herein, after Leave of Court for that Purpose First had and Obtained.

This defendan-, now and at all times hereafter saving and reserving unto itself all benefit and advantage of exception which can or

may be had or taken to the many errors, uncertainties and other imperfections in the said bill contained, for answer thereunto, or to so much and such parts thereof as this defendant is advised is material or necessary for it to make answer unto, answering, says:

1. This defendant admits that the complainant is a corporation organized and existing under the laws of the State of Illinois and owns and is possessed of a street railroad in the Town of Hyde
133 Park, in the City of Chicago, Cook County, Illinois; and that the amount of the outstanding capital stock of the complainant on the 1st day of April, 1900, was 16,038 shares at the par value of $100 per share, and that on said first day of April, 1900, there was an outstanding indebtedness of the complainant of the amount of $1,563,000, as in complainant's bill of complaint alleged.

2. This defendant further answering admits that the defendant James Baird was at the time of the filing of the bill of complaint in this case the collector of the Town of Hyde Park, Cook County, Illinois; and that the defendant Samuel B. Raymond was the County Treasurer and *ex-officio* county Collector of Cook County, Illinois.

3. This defendant further answering admits that the Board of Assessors of Cook County, Illinois, for the year 1900, made an assessment of the taxable property of complainant in Cook County, subject to assessment by said Board of Assessors, and returned said assessment to the Board of Review of Cook County, Illinois, who reviewed the same, and in due course returned the same to the County Collector of Cook County, as required by law.

4. This defendant further answering admits that the members of the State Board of Equalization are elected substantially as alleged in paragraph 4 of Complainant's bill of complaint; and further admits that said Board assembles in regular session
134 in Springfield Illinois, on or about the 11th day of September, 1900, as required by law, and did proceed with the equalization and did equalize the assessments of property in the State of Illinois, for the year 1900, and that said Board proceeded to make assessments of the property subject to assessment by said State Board for the year 1900; and admits that the said Board adjourned in due course, *sine die,* and this defendant further answering states and alleges the fact to be, that said State Board of Equalization did make an alleged assessment of the capital stock and franchises of the complainant for the year 1900 in excess of the assessment of the tangible property of complainant; and that such alleged assessment together with other assessments, was duly certified to the County Clerk of Cook County; and that said County Clerk extended against the said alleged assessment taxes for the year 1900, as required by law; but this defendant denies that in making said assessment the said State Board of Equalization so valued the capital stock and franchises of complainant as to ascertain and determine the fair cash value thereof over and above the assessed value of the tangible property of complainant; but this defendant admits that the alleged assessment as made by said State Board was the sum of $250,000, as the full value, and the sum of

$50,000 as the assessed value; but this defendant states upon information and belief, and from such information and belief
135 charges the fact to be, that the actual full fair cash value of complainant's capital stock and franchises on April 1st, 1900, was far in excess of the value alleged to have been found by the said State Board of Equalization, and that the actual fair full cash value thereof, on the first day of April, 1900, was in excess of $2,846,040; that notwithstanding the fair cash value of Complainant's capital stock and franchises as aforesaid, the said State Board, in total disregard of its duty, as required by law, wilfully and fraudulently found the full value of complainant's capital stock and franchises as above set forth, and set down an assessment of the same over and above the assessment of its tangible property by the local assessors, as above set forth, which said fraudulent and illegal action on the part of said State Board of Equalization, in relation to the valuation and assessment of complainant's property, had by and with the concurrent fraudulent action of complainant itself in its failure to properly list and schedule its property for the purposes of taxation, and to furnish the statement required by law, and in its fraudulent representations to the said State Board. And this defendant further alleges and states the fact to be that said alleged assessment was and has been long prior to the filing of this bill held and declared by the Circuit Court of Sangamon County, and by the Supreme Court of the State of Illinois, to be null
136 and void, and that a reassessment of the capital stock and franchises of the said complainant over and above the assessed value of its tangible property was ordered by said Circuit Court of Sangamon County. This defendant further answering admits that the collector's warrants of the Town of Hyde Park for the year 1900, were by the County Clerk of Cook County delivered to the Collector of the Town of Hyde Park for said year, and that in said warrants there was an extension of taxes against the said alleged assessment by said State Board of Equalization of the capital stock and franchises of complainant for said year 1900.

5. This defendant further answering admits that complainant paid to said collector of the Town of Hyde Park the taxes extended against the said alleged assessment, and that the taxes were distributed to the different municipalities and taxing districts entitled to the same.

6. This defendant further answering admits that at the general election in the State of Illinois, in 1900, James S. McCullough was elected State Auditor, and that he duly qualified as such, and that at the same election there was elected in each Congressional District of the State of Illinois, members of the State Board of Equalization, and that each and every one of said members duly qualified, and that the members who were so elected and who so qualified are as named in paragraph 6 of complainant's bill of Complaint.

137 7. This defendant further answering states and alleges the facts to be that the said State Board of Equalization, at its regular session in the year 1901, did make an assessment of the capital stock and franchises of the complainant for the year 1900;

that the said State Board after a due consideration of the value of the capital stock and franchises of complainant, and of the value of all other properties assessed in the State of Illinois for the year 1900, did ascertain and determine the full value of the capital stock and franchises of complainant for said year 1900, at the sum of $2,846,040, and at an assessed value of $569,208, and deducted from said assessed value of equalized valuation of the tangible property of complainant assessed by the local assessors at $135,322, leaving a net assessment of capital stock, including franchises, in excess of the equalized value of capital stock and debt, over tangible property, of $433,886, as the assessed value, which said assessment was certified to the County Clerk of Cook County, who thereafter extended against said assessment taxes for the year 1900, as required by law, amounting in the aggregate to the sum of $33,569.40, and returned the collector's warrant for the collection of said taxes to the defendant James Baird as collector of the Town of Hyde Park.

This defendant further admits that the said defendant James
138 Baird demanded of Complainant payment of said taxes, and that under the laws of the State of Illinois, it is the duty of the said defendant to levy upon the tangible property of complainant to enforce the collection of said taxes, and that unless the said tax was collected by the defendant Baird it then became the duty of the defendant Samuel B. Raymond, as County Collector, to make collection of the same.

8. This defendant further answering denies that the said complainant had no notice of the said meeting of the said State Board of Equalization in the year 1901; but this defendant states and alleges the fact to be that at the time of making said last assessment the said State Board of Equalization was in regular session, as required by law, and that the complainant herein had knowledge and information that said State Board of Equalization was in session, and that it was the duty of the said State Board to make an assessment of the capital stock and franchises of complainant for the year 1900. And this defendant further states and alleges the fact to be that complainant had full opportunity to be heard by said State Board in making said assessment.

9. This defendant further answering denies that the collection of said sum of $33,569.40, or any portion thereof will be depriving the complainant of its property without due process of law.

139 10. This defendant further answering says that as to the allegations in paragraph 10 of Complainant's bill of Complaint, regarding the alleged assessment of the properties therein named, that it has no knowledge or information concerning the same, excepting that contained in said bill of complaint, and therefore neither admits nor denies the same; but if the same should become material to the issues herein, demands strict proof thereof.

11. This defendant further answering denies that the State Board of Equalization in the year 1901, in making the assessment of the capital stock and franchises of the complainant for the year 1900, intentionally or knowingly assessed or valued the capital stock and franchises of complainant herein upon a higher ratio or standard

of value than other properties in the State of Illinois for said year; and denies that no assessment of the capital stock and franchises of other Illinois corporations subject to assessment upon their capital stock and franchises was made for the year 1900 as in complainant's bill of complaint alleged.

12. This defendant further answering denies that the valuation of complainant's capital stock and franchises, as fixed by the State Board of Equalization for the year 1900, at its regular meeting in the year 1901, was very much more than the fair cash value thereof; and denies that the members of the said State Board of
140 Equalization intended at the time of making said assessment that said assessment should be greatly in excess of the fair cash value of the capital stock and franchises of complainant, or greatly in excess of the valuation of the capital stock of other corporations generally in the State of Illinois.

13. This Defendant further answering denies that the assessments for the year 1900, made by said State Board of Equalization, at its regular meeting in the year 1901, were upon a much higher ratio, or standard of value than the assessments made upon other properties in the State of Illinois for said year 1900; and denies that said assessment as intended by said State Board of Equalization to be, or that the same was, upon a different ratio or standard of value than the assessments of the capital stock of other corporations generally in the State of Illinois for said year 1900; and further denies that in making said assessment the said State Board of Equalization intended or proposed that complainant should pay taxes for the year 1900 which would not be in proportion to the value of its property; and denies that said tax was intended to be discriminative, excessive or unjust; and denies that the sum of $33,569.40, extended as aforesaid, is a just or uniform tax in proportion to the value of complainant's property. But this defendant states on information and belief, and from such information and belief alleges the
141 fact to be, that the different assessing tribunals of the State of Illinois, intended to assess, and did assess all property subject to assessment by them at one-fifth of what such assessing tribunals considered and ascertained to be the actual full fair cash value thereof.

14. This defendant further answering denies that the enforcement of the collection of said tax by levy upon complainant's property will deny to the complainant the equal protection of the laws guaranteed to complainant by Section 1 of the 14th Amendment to the Constitution of the United States.

15. This defendant further answering denies that the complainant is denied the equal protection of the laws or is denied any rights guaranteed to it by the Constitution of the State of Illinois, or the Constitution of the United States, by reason of any law or laws of the State of Illinois, or by the actions of the assessing tribunals referred to in paragraph 15 of the Complainant's said bill of complaint.

16. This defendant further answering states and alleges the fact to be that the assessment made by the State Board of Equalization

at its session in the year 1900 was fraudulent and void, and that it has been declared fraudulent and void, and of no effect in the proceedings in the Circuit Court of Sangamon County aforesaid, and in the Supreme Court of Illinois, as hereinafter in this an-
142 swer set forth. And this defendant denies that the said assessment made by the State Board of Equalization in the year 1900 is impeachable, and denies that the State of Illinois or the County of Cook or any of the different municipalities are estopped from asserting that the said assessment was or is fraudulent or void.

17. This defendant, further answering, admits that while the State Board of Equalization was in regular session in the year 1900, mandamus proceedings were commenced in the Circuit Court of Sangamon County by the People of the State of Illinois, on the relation of Catherine Goggin and Robert C. Steele against the State Board of Equalization, to compel the said State Board to make a proper assessment of the capital stock and franchises of complain-t and other corporations named in the petition for mandamus, and that the complainant herein was not a party defendant to said mandamus proceeding. This defendant further answering states upon information and belief, and from such information and belief alleges the fact to be, that this complainant and the other corporations named in said petition were requested and directed by said State Board to appear in said mandamus proceedings by their own solicitors, and to make such defense or defenses as they might deem advisable, that this complainant and other corporations appeared in said proceedings in said Sangamon County Circuit Court, and in the appeal taken to the Supreme Court of the State of Illinois by their solicitors, and
143 made such defense as they deemed advisable, which defense was made for the benefit of the complainant herein and the other corporations as fully and effectually as if this complainant and the other said corporations had been parties to the said petition for mandamus by name. This defendant further answering admits that final judgment was rendered by the Circuit Court of Sangamon County, and that an appeal was prayed to the Supreme Court of the State of Illinois. And this defendant further answering states and alleges the fact to be that on or about the 24th day of October, 1901, the Supreme Court of Illinois affirmed the said judgment of the said Circuit Court of Sangamon County, and that thereafter a peremptory writ of mandamus was issued by the Circuit Court of Sangamon County commanding the said State Board of Equalization to make a proper assessment of the capital stock and franchises of complainant for the year 1900. And this defendant further states and alleges the fact to be that the assessment thereafter made by said State Board of Equalization of the capital stock and franchises of complainant for the year 1900 was made in pursuance of the said mandate of the said Circuit Court of Sangamon County. But this defendant denies that the members of the said State Board conceived or believed that they should follow and adopted as the assessment of the capital stock

and franchises of complainant for said year 1900, such sum
144 or sums as they understood or believed the Judge of the Circuit Court of Sangamon County found determined or conceived to be the fair cash value thereof; and that they should not act upon their own judgment, knowledge or information obtainable by them without coercion or control. And this defendant denies that the said assessment was not made upon or according to the judgment of the said State Board of Equalization at such sum as the members thereof, from the best information obtainable by them, upon their own judgment, determined to be the fair cash value of Complainant's capital stock and franchises on the first day of April, 1900; but this defendant states and alleges the fact to be that the said State Board of Eqaulization after a due consideration of the value of such capital stock and franchises as of the first day of April 1900, in the exercise of their free and independent judgment, did assess the capital stock and franchises of complainant for said year at the sums heretofore set forth; but this defendant denies that said assessment was an arbitrary or an intentional discrimination against said complainant.

18. This defendant further answering denies that complainant has fully paid all taxes for the year 1900, which were legally assessed or levied against it, or its property, but this defendant admits that complainant paid the taxes extended against said assessment,
145 which was by the judgment of the Circuit Court of Sangamon County, and the Supreme Court of the State of Illinois, declared illegal and void, and that no credit has been given complainant on account of said payment.

This defendant, further answering, states that it is a municipal corporation, duly organized and existing under and by virtue of the laws of the State of Illinois, and that under and by virtue of the laws of the State of Illinois, it will be the duty of the County Collector and the County Treasurer of Cook County, Illinois, to pay over to this defendant as its share of the taxes so due and owing from the complainant in this cause, the sum of $26,337.66, and therefore this defendant shows that it is in equity the owner of and entitled to receive the said sum of $26,337.66 out of the taxes now in controversy in this cause.

And this defendant, further answering says that as to the allegations in said bill of complaint contained not herein specifically answered, admitted or denied, is that this defendant neither admits nor denies the same, but demands strict proof thereof. And this defendant further answering denies that the complainant is entitled to the relief or any part thereof in said bill of complaint demanded and prays the same advantage of this answer as if it had pleaded or demurred to the same, and prays to be henceforth dismissed
146 with its reasonable costs and charges in this behalf most wrongfully sustained.

CITY OF CHICAGO,
By DAVID K. TONE,
Special Counsel,
JAMES HAMILTON LEWIS,
Coporation Counsel.

(Endorsed:) Filed May 19, 1906. Marshall E. Sampsell, Clerk.

147 And on to-wit: the twenty-fifth day of July, being one of the days of the regular days of the July term of said Court, 1906, in the record of proceedings thereof in said entitled cause before the Hon. Peter S. Grosscup, Circuit Judge, appears the following entry to-wit:

148 In the Circuit Court of the United States, Northern District of Illinois, Northern Division.

26169.

THE SOUTH CHICAGO CITY RAILWAY COMPANY
vs.
JAMES BAIRD, Collector of the Town of Hyde Park, and SAMUEL B. RAYMOND, County Collector, ET AL.

This cause came on to be further heard at this term and was argued by counsel, and thereupon, upon consideration thereof, it is ordered that all objections and exceptions to the Master's reports be, and the same are hereby, overruled, and that the Master's reports and each of them be, and they are hereby, approved and confirmed; and the Court finds that it has jurisdiction of all of the parties hereto and of the subject matter hereof, and that all the material allegations of the bill of complaint are sustained by the evidence, and that the equities of the case are with the complainant; and thereupon the Court doth order, adjudge and decree as follows:

149 That the assessment made by the State Board of Equalization of the State of Illinois, at its session in 1901, against the complainant The South Chicago City Railway Company, upon its capital stock, for the year 1900 (the net amount of said assessment being $433,886.00) was made under the coercive influence of a writ of mandamus, issued by the Circuit Court of Sangamon County, in the State of Illinois, and does not represent the real or independent judgment of the said State Board of Equalization, and that the assessments made by the State Board of Equalization, at its meeting held in 1901, upon the capital stock of the said complainant and upon the capital stock of the other corporations named in the writ of mandamus above mentioned, for the year 1900, was in fact made upon a materially different basis from that upon which the capital stock of all other corporations of the same class was assessed for the year 1900 by the State Board of Equalization, and also upon a basis materially different from that upon which all other taxable property in the State of Illinois was assessed for the year 1900; that said assessment made in 1901 upon the capital stock of the complainant for the year 1900 was made under the coercive influence of said mandamus without the exercise or application of the judgment of the State Board of Equalization, or the members thereof, to the ascertainment of the value of said capital stock, and

150 without the State Board of Equalization, either in fact or in form, taking into consideration the basis upon which all other taxable property in the State of Illinois was assessed

and taxed for the year 1900, and without in fact or in form equalizing the valuation or assessment of the capital stock of said complainant for the year 1900 with all or any of the assessments made upon the other taxable property in the State of Illinois for the year 1900, with the result that the said assessment upon the capital stock of complainant, made in the year 1901 for the year 1900, was made on a much higher basis than that upon which the other taxable property of the State of Illinois was assessed and taxed for the year 1900; that the said assessment, made in the year 1901 for the year 1900, by the said State Board of Equalization, was made without notice thereof to the complainant or opportunity to the complainant to appear and be heard in respect thereto; and that in making said assessment said State Board of Equalization did not take into consideration the fact that the capital stock tax on complainant's capital stock for the year 1900 had been theretofore assessed by the State Board of Equalization and had been theretofore paid by the complainant; that said assessment upon said capital stock for the year 1900 was and is unjust and inequitable; that the making of said assessment as aforesaid in 1901, upon the capital stock of the said complainant, and the extension of taxes thereon, and the attempt to enforce the payment of such taxes so extended, from complainant,

151 was and is a violation of the Fourteenth Amendment to the Constitution of the United States, and that the attempt to enforce the collection from complainant of the taxes extended on said re-assessment will, unless restrained, result in a multiplicity of suits, and in irreparable injury to the complainant.

An order was entered herein on the 28th day of June 1902, as a condition precedent to the granting of the temporary relief prayed for in the bill of complaint herein, that complainant should pay in addition to the tax already paid upon the first or original capital stock assessment for the year 1900, the further sum of $184.88, making a total tax to be paid by the complainant for the year 1900 of $6,592.93, which is found and decreed by the Court to be all that complainant should be required to pay as taxes for the year 1900. Said additional sum of $184.88 has been paid by the complainant to the County Treasurer of Cook County in compliance with said order, making the total amount paid by complainant as taxes for the year 1900 the said sum of $6,592.93.

It is therefore ordered, adjudged and decreed that the said assessment of $433,886.00, on the capital stock of complainant, made by the State Board of Equalization in the year 1901 for the year 1900, and all taxes levied and extended thereon, and now held upon the books of the tax collecting agencies of the City of Chicago, County

152 of Cook and State of Illinois for collection, be and they are, and each of them is, illegal, null and void, and that the defendants James Baird, Town Collector of the Town of Hyde Park, and his successor and successors in office, as such Town Collector, and the defendant Samuel B. Raymond, County Treasurer of Cook County, Illinois, and *ex-officio* County Collector of said County, and his successor and successors in office, as such County Treasurer and *ex-officio* County Collector, and the defendant the City of Chi-

cago, and each of them and each and every of their respective agents, deputies, servants, attorneys, and representatives be, and they are and each of them is, hereby perpetually enjoined and restrained from in anywise levying or collecting, or in any manner attempting, directly or indirectly, to levy or collect or to enforce against the complainant or against any of its property, said tax or taxes, or any or either of them, or any part thereof.

It is further ordered, adjudged and decreed that the costs of this cause be taxed against complainant.

153 And on to-wit: the tenth day of August, being one of the days of the regular July term of said Court, 1906, in the record of proceedings thereof in said entitled cause before the Hon. Peter S. Grosscup, Circuit Judge, appears as of July twenty-fifth the following entry to-wit:

Order of August 10, 1906, Entered as of July 25, 1906.

26169.

SOUTH CHICAGO CITY RAILWAY COMPANY
vs.
SAMUEL B. RAYMOND ET AL.

This cause this day coming on to be heard, after due notice to all the parties to this cause; and it appearing to the Court that James Baird, Town Collector of the town of Hyde Park, had died prior to the entry of the final decree in this cause on July 25th, 1906; and it appearing to the Court that prior to the entry of said decree, the term of office of Samuel B. Raymond as County Collector had expired and that John J. Hanberg had been duly elected and qualified as his successor in office; and it appearing that prior to the entry of the final decree herein, said John J. Hanberg, as the successor in office of said Samuel B. Raymond, had entered his appearance in this cause and was made a party defendant and had adopted all the pleadings and proceedings of the other defendants to this cause, and had agreed not to introduce any new evidence.

154 Now it is hereby Ordered that the final decree herein entered on the 25th day of July, 1906, be so amended as to strike out, after the words, "null and void" in the first line on page 5 of said decree, the following language:—"And that the defendants, James Baird, Town Collector of the Town of Hyde Park and his successor and successors in office, as such Town Collector," and insert after the words "City of Chicago" in the 8th line of said decree on page 5, the following:—"And John J. Hanberg, successor in office of said Samuel B. Raymond, as County Treasurer of Cook County, Illinois, and *ex-officio* County Collector of Cook County, Illinois, and *ex-officio* Town Collector of the various Towns within the City of Chicago, and his successor and successors in office," this order entered *nunc pro tunc* as of the 25th day of July, 1906.

155 And on to-wit: the tenth day of August, 1906, there was filed in the clerk's office of said Court in said entitled cause a certain Certificate in words and figures following to wit:

Certificate.

In the Circuit Court of the United States, Northern District of Illinois.

No. 26169.

THE SOUTH CHICAGO CITY RAILWAY COMPANY, Complainant,
vs.
SAMUEL B. RAYMOND, County Collector, ET AL., Defendants.

Be it remembered that on the final hearing of the above entitled cause, before his Honor Judge Grosscup, on the 5th day of June, 1906, counsel for the City of Chicago mad d insisted upon before the Court each and every objection in re. ence to the admission and exclusion of evidence made by the defendants or any of them before the Master, as shown in the various Masters reports now on file in this cause, and said objections and each of them overruled by the Court, to which rulings and to each of them counsel for the City of Chicago excepted; and counsel for the City of Chicago also objected to the Court hearing or considering any oral evidence for the purpose of explaining, varying or contradicting the official acts, records and proceedings of the said Board of Equalization of the State of Illinois for the years 1900 and 1901, in reference to the capital stock assessment levied by the State Board of Equalization of the State of Illinois against the complainant in the year 1901 as and for the year 1900. Said objection was overruled by the Court, to which ruling counsel for the City of
156 Chicago excepted; the court basing its decree not upon the findings of fact by the Master but upon the evidence contained in the Master's report.

P. S. GROSSCUP.

(Endorsed:) Filed Aug. 10, 1906. Marshall E. Sampsell, Clerk.

157 And on to-wit: the tenth day of August, 1906, come the defendants in the above entitled cause by their solicitors and filed in the clerk's office of said Court their certain Petition for Appeal in words and figures following to-wit:

158 *Petition for Appeal.*

In the Circuit Court of the United States, Northern District of Illinois, Eastern Division.

No. 26169.

THE SOUTH CHICAGO CITY RAILWAY COMPANY, Complainant,
vs.
SAMUEL B. RAYMOND, County Treasurer of Cook County, Illinois, and *ex-Officio* County Collector, Cook County, Illinois, and JOHN J. HANBERG, His Successor as County Treasurer of Cook County, Illinois, and *ex-Officio* County Collector of Cook County, Illinois, and *ex-Officio* Town Collector of the Town of Hyde Park, and THE CITY OF CHICAGO, Defendants.

Petition for Appeal.

The above named defendants, Samuel B. Raymond, County Treasurer of Cook County, Illinois, and *ex-officio* County Collector, Cook County, Illinois, and John J. Hanberg, his successor as County Treasurer of Cook County, Illinois, and *ex-officio* County Collector of Cook County, Illinois, and *ex-officio* Town Collector of the Town of Hyde Park, and the City of Chicago, and each of them, believing themselves to be aggri-ved by the order and decree of this Court, made and entered on the 25th day of July, A. D. 1906, whereby the said defendants and each of them and each and every of
159 the officers, agents and employés of the said defendants are perpetually enjoined and restrained from in any wise levying or collecting or in any manner attempting to levy or collect or to enforce against the complainant the taxes or any or either of them, made and levied by the State Board of Equalization in the year 1901 for the year 1900, said taxes amounting to the sum of $433,886.—all of which appears of record in said Court, and which decree is more fully set forth in the record in this cause, and the said above named defendants hereby jointly and severally pray an appeal from said order and decree to the Supreme Court of the United States.

HARRY A. LEWIS,
WILLIAM F. STRUCKMANN,
JAMES HAMILTON LEWIS, AND
DAVID K. TONE,
Solicitors for the Above-named Defendants.

The above appeal is allowed, and the appeal bond is fixed at $200, said bond to be approved by the Clerk of this Court.

P. S. GROSSCUP.

(Endorsed:) Filed August 10, 1906, Marshall E. Sampsell, Clerk.

160 And on to-wit: the tenth day of August, 1906, came the defendants in said entitled cause by their solicitors and filed in the clerk's office of said Court their certain Assignment of Errors in words and figures following to-wit:

161 *Assignment of Errors.*

In the Circuit Court of the United States, Northern District of Illinois, Eastern Division.

No. 26169.

THE SOUTH CHICAGO CITY RAILWAY COMPANY, Complainant,
vs.
SAMUEL B. RAYMOND, County Treasurer of Cook County, Illinois, and *ex-Officio* County Collector, Cook County, Illinois, and JOHN J. HANBERG, His Successor as County Treasurer of Cook County, Illinois, and *ex-Officio* County Collector of Cook County, Illinois, and *ex-Officio* Town Collector of the Town of Hyde Park, and THE CITY OF CHICAGO, Defendants.

Assignment of Errors.

The above named defendants, Samuel B. Raymond, County Treasurer of Cook County, Illinois, and *ex-officio* County Collector, Cook County, Illinois, and John J. Hanberg, his successor as County Treasurer of Cook County, Illinois, and *ex-officio* County Collector of Cook County, Illinois, and *ex-officio* Town Collector of the Town of Hyde Park, and The City of Chicago, jointly and each of them, separately and severally show that in the record and proceedings in the above entitled cause and in the decree made herein July 25th, 1906, manifest error has occurred, to the prejudice of these defendants, and each of them, especially in the following particulars:

First. The said Circuit Court erred in failing and refusing to dismiss this cause for want of jurisdiction in a Federal Court, appearing upon the face of complainant's bill of complaint.

Second. The said Circuit Court erred in failing to dismiss complainant's bill of complaint for want of jurisdiction, because the undisputed evidence in this record shows that a circuit Court of the United States is without jurisdiction to hear and determine the matters and things charged in complainant's bill.

Third. The said Circuit Court erred in refusing to hold that the allegations of the complainant's bill of complaint show that complainant has not been denied by the state of Illinois or its officers, any right, privilege or immunity guaranteed to the complainant by the Fourteenth Amendment to the Constitution of the United States.

162 & 163 Fourth. The said Circuit Court erred in refusing to hold that the allegations of complainant's bill of complaint show that the complainant has not been deprived of its prop-

erty without due process of law, in violation of the Constitution of the United States.

Fifth. The said Circuit Court erred in refusing to hold that the State of Illinois had not denied to the complainant the equal protection of its laws within its jurisdiction.

Sixth. The said Circuit Court erred in refusing to find that the sole grievance complained of in complainant's bill of complaint is that the officers of the State of Illinois charged with the duty of making a fair and equal assessment of the complainant's capital stock, have made an assessment that is unfair and unequal, contrary to and in violation of the Constitution and the Laws of the State of Illinois; and said Circuit Court likewise erred in assuming and retaining jurisdiction of this cause, when, upon the face of complainant's bill of complaint, it appears that the said Circuit Court was without jurisdiction.

Seventh. The said Circuit Court erred in refusing to hold that inasmuch as the complainant and defendants were all citizens of and residents of the State of Illinois, a Federal Court had no jurisdiction in this cause to hear and determine the fairness, equality or regularity of the assessment made against the complainant, and the said Circuit Court erred in refusing to dismiss this cause for want of jurisdiction.

164 Eighth. The said Circuit Court erred in entering upon a calculation as to the amount of taxes to be paid by the complainant upon its capital stock for the year 1900 and in finding and determining the amount of said taxes, for said Circuit Court should have held that the determination as to the amount of taxes to be paid by all persons within the State of Illinois was a matter exclusively committed by the laws of Illinois to the assessing officers of the State of Illinois.

Ninth. The said Circuit Court erred in overruling the objections and exceptions and each and every of said objections and each and every of said exceptions to the said Master's reports and to each of them.

Tenth. The said Circuit Court erred in approving and confirming the Master's reports and each of them, filed in this cause.

Eleventh. The said Circuit Court erred in failing and refusing to sustain the objections and each and every of the same filed by the defendants to said Master's reports and to each of said reports.

Twelfth. The said Circuit Court erred in finding that all of the material allegations of the bill of complaint are sustained by the evidence and likewise in finding that the equities of the case are with the complainant.

Thirteenth. The said Circuit Court erred in failing to find that the material allegations of the bill of complaint in this cause have not been proved by any competent evidence.

165 Fourteenth. The said Circuit Court erred in finding that the assessment made by the State Board of Equalization of the State of Illinois at its session in 1901 against the complainant, upon its capital stock for the year 1900, amounting to $433,886. was made under the coercive influence of a writ of mandamus, issued by

the Circuit Court of Sangamon County, in the State of Illinois, and did not represent the real or independent judgment of the said State Board of Equalization.

Fifteenth. The said Circuit Court erred in failing and refusing to find that the assessment, amounting to $433,886 made by the State Board of Equalization of the State of Illinois at its session in 1901 against the complainant, upon its capital stock for the year 1900, was made by the said State Board of Equalization in the exercise of its own judgment and upon its official responsibility.

Sixteenth. The said Circuit Court erred in finding that the assessments made by the State Board of Equalization at its meeting, held in 1901, upon the capital stock of said complainant and upon the capital stock of the other corporations for the year 1900, named in the writ of mandamus, issuing from the Circuit Court of Sangamon County, Illinois, were in fact made upon a materially different basis from that upon which the capital stock of all other corporations of the same class were assessed by the State Board of Equalization for the year 1900, and also upon a basis materially different from that upon which other taxable property in the State of Illinois was assessed for the year 1900.

166 Seventeenth. The said Circuit Court erred in refusing and failing to find that the only competent evidence contained in record in this cause showed that the assessment made by the State Board of Equalization at its meeting held in 1901 upon the capital stock of said complainant, and upon the capital stock of the other corporations for the year 1900, named in the writ of mandamus issuing from the Circuit Court of Sangamon County, Illinois, were in fact made upon the same or a similar basis, as that upon which the capital stock of all other corporations of the same class were assessed by the State Board of Equalization for the year 1900, and also that said assessments as to each of said corporations were made upon the same or a similar basis upon which all other taxable property in the State of Illinois was assessed for the year 1900.

Eighteenth. The said Circuit Court erred in finding that said assessment made in 1901 on the capital stock of complainant was made under the coercive influence of a writ of mandamus, issuing from the Circuit Court of Sangamon County, Illinois, without the exercise or application of the judgment of the State Board of Equalization or the members thereof, to the ascertainment of the value of said capital stock, and without the State Board of Equalization, either in fact or in form, taking into consideration, the basis upon which all other taxable property in the State of Illinois was assessed and taxed for the year 1900 and without in fact or in form equalizing the valuation or assessment of the capital stock of said complainant for the year 1900 with all or any of the assessments made upon the other taxable property in the State of Illinois for the year 1900,

167 with the result that the said assessment made on the capital stock of the complainant, in the year 1901 for the year 1900, was made on a much higher basis than that upon which the other taxable property of the State of Illinois was assessed and taxed for the year 1900.

Nineteenth. The said Circuit Court erred in refusing and failing to find that the assessment made in the year 1901 on the capital stock of the complainant, was made without any coercion and in the exercise of the independent judgment of the State Board of Equalization and the members thereof, for the purpose of ascertaining the fair value of the capital stock of said complainant, and that said assessment was obtained and resulted from the said State Board of Equalization equalizing the value and assessment of the capital stock of said complainant for the year 1900 with all of the assessments made upon other taxable property in the State of Illinois, and that the assessment so arrived at was just and fair to the said complainant.

Twentieth. The said Circuit Court erred in finding that said assessment made in the year 1901 for the year 1900 on the capital stock of the complainant, by the State Board of Equalization, was made without notice thereof to the complainant or opportunity to the complainant to appear and be heard in respect thereto; that said court should have held that complainant did have notice of said proceedings and did have an opportunity to hear and be heard before said State Board of Equalization.

Twenty-first. The said Circuit Court erred in finding that in the making of said assessment of the capital stock of the com-
168 plainant in the year 1901 for the year 1900, said State Board of Equalization did not take into consideration the fact that the capital stock tax upon the complainant's capital stock for the year 1900 had theretofore been assessed by the State Board of Equalization and had theretofore been paid *by* the State Board of Equalization.

Twenty-second. The said Circuit Court erred in finding that the making of the assessment for the year 1900 upon the capital stock of the said complainant, and the extension of the taxes thereon, and the attempt to enforce the payment of the taxes so extended, from complainant, was and is a violation of the Fourteenth Amendment to the Constitution of the United States.

Twenty-third. The said Circuit Court erred in entering the order on the 28th day of June, 1902, to the effect that the complainant should pay, in addition to the tax already paid, upon the first or original capital stock assessment for the year 1900, the further sum of $184.88, making a total capital stock tax to be paid by the complainant for the year 1900 of $6,592.93, which was found and decreed by the court to be all that complainant should equitably be required to pay as a capital stock tax for the year 1900, for said Circuit Court should have found, if it had jurisdiction of this cause and of the parties hereto, that the complainant should be required to pay the aggregate amount of all taxes assessed against it in the year 1901 as and for the year 1900 upon its capital stock, aggregating $433,883.

Twenty-fourth. The said Circuit Court erred in ordering, adjudging and decreeing that the assessment of $433,886 on the
169 capital stock of the complainant, made by the State Board of Equalization in the year 1901 for the year 1900, and all taxes

levied and extended thereon and now held upon the books of the tax collecting agencies of the City of Chicago, County of Cook and State of Illinois for collection, are, and each of them is, illegal, null and void, and that the defendants Samuel B. Raymond County Treasurer of Cook County Illinois, and *ex-officio* County Collector of Cook County Illinois, and *ex-officio* Town Collector of the Town of Hyde Park, in said county, and John J. Hanberg, his successor as County Treasurer of Cook County, Illinois, and *ex-officio* County Collector of said County and *ex-officio* Town Collector of the Town of Hyde Park in said County and his successor and successors in office as such County Treasurer and *ex-officio* County Collector and *ex-officio* Town Collector of said Town of Hyde Park, and the defendant, the City of Chicago, and each of them and each and every of their respective agents, deputies, servants, attorneys and representatives, be and are perpetually enjoined and restrained from in anywise levying or collecting or in any manner attempting, directly or indirectly, to levy or collect or to enforce against the complainant or against any of its property, the said tax or taxes, or any or either of them, or any part thereof.

170 Twenty-fifth. The said Circuit Court erred in admitting and receiving in evidence over the objection and exception of defendant's counsel, the following testimony of samuel M. Barnes, a member of the State Board of Equalization, of the State of Illinois for the years 1900 and 1901:—

I heard the members of the State Board of Equalization discuss the remarks of the court on the application for an extension of time to make return to the writ of mandamus. My recollection of one remark that I heard was that it was a mere question of the Board's getting their pencils and getting to work and they ought to do it. I heard one of the Board say that the court was very vituperative in this matter. I think it was either Mr. Schaefer or Mr. Hopkins of the Committee on the Board who was over there listening to the court. The impression I got was very strongly fixed in my mind and it was that his attitude was intensely hostile to the Board and I was told by those who heard him that it was in the shape of a roast from start to finish as far as his manner was concerned. Of course, I cannot just quote the language he used, but rather his manner I was told was vituperative, absolutely so. I was told this by members of the State Board of Equalization who were present and heard the remarks of the Judge. The reassessment as we determined it, was made with a view to satisfying the court, the order of the court. We made no deduction, if I remember rightly, on account of that all of these Companies but two had in 1900 been assessed upon their capital stock. We did not take into consideration the fact, if it was a fact that other property in the State had not been assessed at the maximum more than 70 per cent. of its value. The court, in his discussion, gave an illustration of the manner in which the assessment should be made and I think he made an example of the Gas Company here; in any event one of the companies he made

171 an example of that and in that example he said just how the assessment should be made and as this was an order of the

court, we followed that example that he gave in a general way, for all these assessments. Mr. Smith and Mr. Greenacre furnished these tables (referring to complainant's Exhibit A, 10/23/03) said document being a compilation of the value of the capital stock of said Companies, prepared by Miss Goggin and Miss Haley, as members of the Teachers' Federation. Our desire in making this reassessment was in order to satisfy the Circuit Court of Sangamon County, because it was not my judgment that it was a proper assessment. The general idea seemed to be with the committee on capital stock that the action of the committee was dictated by the court. It was discussed between the committee on capital stock at about the time the reassessment was reported to the Board and the first object to be attained was to satisfy the court. The assessments that were made subsequent to this assessment of 1900 were based on what we believed to be the law and in a general way on the judgment of the members, that is on the real value. The assessment for 1901 we regarded as representing our real judgment and the other we did to satisfy the court. The restraining order issued by the court was dissolved on the 22nd of November and I think it was a very short time after that on that day that we made our return to the writ.

Twenty-sixth. The said Circuit Court erred in admitting and receiving in evidence, over the objection and exception of defendants' counsel, the following testimony of Frank P. Martin, a member of the State Board of Equalization of the State of Illinois for the years 1900 and 1901:—

I remember making the reassessment on or about the 22nd day of November, when a writ of mandamus issued from the Circuit Court of Sangamon County, early in November, and that an application was made to the Circuit Court of Sangamon County for an extension of time within which to make the reassessment, and it was
172 denied. I have read the examination of Dr. Barnes what purport to be the remarks of Judge Thompson on that occasion. Shortly after those remarks were made by the Judge, they were repeated to me and I was familiar with them. A statement was also made, purporting to have come from Judge Thompson that we had better get our candles and lamps and begin to get busy. We felt, when we made the assessment, that we were bound absolutely by the mandate of the court and the deliberations of the court. I felt at the time that the values ought to be made on the information furnished by Mr. Greenacre from the School Teachers. The capital stock committee, of which I was a member, relied for information in fixing the values in the reassessment in relation to the complainant companies, upon the information furnished by the teachers, being complainant's Exhibit A. We made this assessment because I thought I wanted to satisfy the court and what the court wanted was to satisfy Mr. Greenacre and the teachers. I was not taking my own judgment in the matter at all. I did not take into consideration what other property throughout the State was valued at. I did not take into consideration what the capital stocks of these companies had been assessed at for the year 1900. As far as I remember no deduction was made in fixing the assessed value of the capital stock

of these companies on the reassessment on account of property throughout the State on the average, personal and real, not having been returned at full value for assessment at its full value. In the year 1900 and other previous years the State Board of Equalization did not, I think, treat the bonded indebtedness of corporations as assets, and that was so in respect to all corporations throughout the State.

Twenty-seventh: The said Circuit Court erred in admitting and receiving in evidence, over the objection and exception of defendants' counsel the following testimony of John S. Cruttenden, a member of the Board of Equalization of the State of Illinois for the years 1900 and 1901:

173 "I remember the mandamus suit brought on the relation of Catherine Goggin and R. S. Steele against the State Board of Equalization. The writ of Mandamus was issued from the Circuit Court in Sangamon County, on or about the second of November, 1901, and I remember that an application was made on or about the 9th or 10th of November, to the Circuit Court of said County, for an extension of time within which to comply with the order as expressed in the writ, and I heard read what purported to be the remarks of Judge Thompson made on that application. The information upon which we based the figures that we made for the re-assessment of 1900, was practically based upon the documents laid before us by the Teachers, known as Exhibit B. Our idea in making this assessment, was to comply with the request of the court. The assessment, as finally reached by us, upon these companies named as complainants in these cases, did not represent what we considered to be the value of their capital stock for the purposes of assessment; not according to the information that we gained afterwards. We supposed from this document, that these teachers had pretty reliable information on the values, and we took those figures almost all the way through. We concluded to take the example of the Peoples Gas Light and Coke Company cited by the court for all the cases, thinking that we would satisfy the court. It was the feeling of the Board that if we did not comply with the idea of the court, whether right or wrong, we would all go to jail. I know I had people calling at my office at Springfield and Chicago, at my offices, and informing me that it would be an unpleasant thing to go to jail about this matter. In making this report which was adopted by the Board, we did not make any deduction on account of the assessment against the capital stock that had been made against these companies. We did not make any deduction,

174 because of the fact that other property in the State had not been assessed, to its full value. We proceeded upon the theory that it was absolutely void; that they were not entitled to any credit; and we would not take any chances of punishment for contempt by giving them credit: You told us (referring to counsel for Union Traction Company) that the Union Traction Company controlled the stock of the Underlying Companies; but we did not give any credit in the re-assessment. We assessed the whole stock of the other company, too, upon the advice of Mr. Greenacre. In the case

of the re-assessment of the Chicago Edison Company for 1900, we made no reduction on account of the capital stock invested in patent rights. Prior to the year 1900, they equalized and endeavored to make the assessment upon the same basis as to values as property throughout the state was assessed.

Twenty-eighth. The said Circuit Court erred in admitting and receiving in evidence over the objection and exception of defendants' counsel the testimony of Louis D. Hirsheimer, a member of the State Board of Equalization of the State of Illinois, for the year 1901;

"I remember that about the 2nd of November, 1901, a writ of mandamus issued against the members of the State Board of Equalization, returnable November, 22nd, I believe, and that an application was made by the members of the State board for an extension of time, within which to comply with the order of the court as expressed in its writ. The next morning I heard what purported to be extracts from the remarks of Judge Thompson, in rendering his decision on the application for an extension. The remarks were freely discussed at the hotel by members of the Board, and I was informed that he was very much displeased by the application for an extension even being asked; and finally gave them the ultimatum of making an assessment, or of being punished for contempt
175 of court. I heard him say that all that was necessary was a lead pencil and a little time, that all it required was the sharpening of a lead pencil and getting to work. The printed form furnished by Miss Haley and Miss Goggon were principally relied upon in making up the figures. Before our report was made I talked with Mr. Smith, Mr. Greenacre stated that the report was all right. I felt that anything Mr. Greenacre would recommend the court would perhaps consider to some extent as right. I heard him say that whatever the views of any member of the Committee as to values to be taken the opinion laid down there was what it would be, or something to that effect. In making up the report, I did not take into consideration the fact that there had been assessments made on all of the complainant companies, except two. In making up the report as to the values of these properties, I did not make any deduction whatever, in order to equalize the values of these properties with the values of other property in the State. We made an application for an extension of time to make these returns, in order to have more time to consider it, in arriving at our conclusion; but when that was denied, we had to make our report on such information as we had. In making these figures, to a very large extent, we acted upon the wishes of the Teachers' attorney and the Court's instructions.

In the matter of the Chicago Edison Company's assessment for the year 1900, the capital stock was $6,000,000. That was assessed at 125, and a credit of $725,000 given for United States Patents, leaving $6,775,000. Taking the debt at par, $5,508,000, making a total value of $12,283,000 on a basis of 70 per cent.; making $8,598,100; tangible property, $4,909,165, leaving 3,688,935, full value of the capital stock; one fifth value $737,787.

176 Twenty-ninth. The said Circuit Court erred in admitting and receiving in evidence over the objection and exception of defendant's counsel, the testimony of William M. Flook, as follows:

I made certain mathematical calculations and deductions, which are set forth in "Flook Exhibit A 11/25/03, H. W. B." That Exhibit was compiled, in a general way, from the collection and compilation of statistics and figures from the records of the State Board of Equalization, from the time it first commenced to make reports, in 1873, down to 1900, and from the report of the Railroad and Warehouse Commission of the State of Illinois, for 1900, *and from the report of the Railroad and Warehouse Commission of the State of Illinois, for 1900,* and from Brown's Directory of Gas Companies for the year 1900. I have reduced the result of that work to the form of a report or statement. This statement has been made from the source I have now described (referring to said Flook Exhibit A.)

Thirtieth. The said Circuit Court erred in admitting and receiving in evidence, over the objection and exception of defendants' counsel, the document shown as "Flook Exhibit A, 11/25/03 H. W. B." as follows:

"From the report of the Railroad and Warehouse Commission for the year 1900 (pp. lxxx*ll*-lxxxv*ll*) it appears that there were in that year 116 railroad companies operating within the state of Illinois that the total mileage of main line and branches owned by said railroad companies was 47,685.37; miles; that of such total mileage so owned by said railroad companies, 10,817.10 miles of main line and branches were located in Illinois; that 1,548.71 miles of second, third and fourth additional main tracks were so owned and located in Illinois; that 4,248.86 miles of yards, tracks, sidings and spurs were so owned and located in Illinois; that 164.61 miles of industrial tracks were so owned and located in Illinois, and that 103.52
177 miles of new line building during the year 1900, exclusive of side tracks, were so owned and located in Illinois.

From said report it further appears (pp. lxxx*Vll-Xclll*) that the total amount outstanding of capital stock of said railroad companies was $1,401,508,589.; that the amount of capital stock per mile was $28,867.; that the total amount outstanding of bonded debt of said railroad companies was $1,667,190,160.; and that the amount of funded debt per mile of line was $34,305.

Assuming that the value of the railroad property in this state was as great per mile of road as that out side of the state, and multiplying the mileage of the main lines and branches in Illinois (10,817)miles) by the amount of capital stock per mile of line ($28,867.), it appears that the capital stock of said 116 railroad companies represented by the mileage of main lines and branches owned by said railroad companies in this state was $312,254,339.

Upon the same basis, multiplying the mileage of the main lines and branches in Illinois (10,817)miles) by the amount of funded debt per mile of line ($34,306.), it appears that the funded debt of said 116 railroad companies represented by the mileage of main lines and branches owned by said railroad companies in this state was $371,077,185.

Upon the same basis the total amount of capital stock and funded debt represented by the mileage of main lines and branches owned by said railroad companies within this state was $683,331,524.

From the published report of the State Board of Equalization for the year 1900 it appears that the full value of all the railroad property in the State of Illinois, as founded by said Board, included main tracks, second main tracks, side or turnout tracks, buildings on right of way and rolling stock, was $389,393,360.

178 From the published report of the State Board of Equalization for the year 1873 (p. 35) it appears that the following resolution was referred to the Committee on Assessment of Capital Stock of Corporations:

"Resolved, that for the purpose of equalizing between land, town and city lots, personal property, railroads and corporations, sixty per cent. be the rate of general average in the State."

From the published report of said Board for the year 1874 (p. 79) it appears that the Committee on Capital Stock of Corporations made a report to the Board, accompanying which was a table (pp. 86, *et seq.*) showing "The assessment of capital stock of companies and associations incorporated under the laws of this State, other than railroad companies." Such companies and associations are listed in said table under the following headings: "Name of company; Location; Capital stock paid up; Total indebtedness, except for current expenses; Market or actual value of paid capital stock and debt; as determined by the state board; Capital stock and debt, as equalized with the aggregate assessment of the state, by deducting forty per cent. of market or actual value; Total equalized value of tangible property assessed where located; Assessed and equalized value of capital stock, being excess of equalized value of capital stock and debt over equalized value of tangible property." The report of said Committee was adopted by the Board. (p. 96).

179 From the published report of said Board for the year 1875 (pp. 8, 9) it appears that the following resolution was adopted:

"Resolved that in the opinion of this Board, the real and personal property of the state is assessed for the year 1875 at fifty per cent. of its cash value."

From the published report of said Board for the year 1876 (pp. 7, 9) it appears that the following resolution was adopted:

"Resolved that it is the opinion of this Board that the real and personal property of the State has been assessed at fifty per cent. of its cash value, for the year 1876."

From the published report of said Board for the year 1877 (pp. 17, 18) it appears that the following resolution was offered:

"Resolved that it is the opinion of this Board that the real and personal property of the State is assessed for the year 1877 at sixty per cent. of its cash value."

That an amendment changing the percentage from sixty per cent. to fifty per cent. was accepted by the mover of such resolution, and that the same was then adopted.

From the published report of said Board for the year 1878 (p. 10) it appears that the following resolution was offered:

"Resolved that it is the opinion of this Board that the real and personal property of the State is assessed at sixty per cent. of its cash value for the year 1878."

That said resolution was amended by changing the per-
180 centage from sixty per cent. to fifty per cent., and as amended adopted.

From the published report of said Board for the year 1879 (pp. 10, 11) it appears that the following resolution was offered

"Resolved that it is the opinion of this Board that the real and personal property of the State, is assessed at sixty-five per cent. of its cash value for the year 1879."

That said resolution was amended by changing the percentage from sixty-five per cent. to fifty per cent., and as amended adopted.

From the published report of said Board for the year 1880 (p. 6) it appears that the following resolution was adopted:

"Resolved that in the opinion of this Board the real and personal property of the state is assessed at fifty per cent. of its cash value, for the year 1880."

From the published report of said Board for the year 1881 (p. 9) it appears that the following resolution was adopted:

"Resolved that in the opinion of this Board the real and personal property of the State is assessed at fifty per cent. of its cash value, for the year 1881."

From the published report of said board for the year 1882 (p. 6) it appears that the following resolution was adopted.

"Resolved that in the opinion of this Board the real and personal property of the State is assessed at fifty per cent. of its cash value, for the year 1882."

181 From the published report of said Board for the year 1883 (p. 5) it appears that the following resolution was adopted:

"Resolved that in the opinion of this Board the real and personal property of the State is assessed at fifty per cent. of its cash value for the year 1883."

From the published report of said Board for the year 1890 (p. 5) it appears that the following resolution was adopted:

"Resolved that in the opinion of this Board, the real and personal property of this State, as returned by the local assessors for the year 1890, is assessed at twenty-five per cent of its fair cash value."

From the published report of said Board for the year 1891 (p. 9) it appears that the following resolution was adopted:

"Resolved that in the opinion of this Board, the real and personal property of this State, as returned by the Local Assessors for the year 1891, is assessed at an average rate not exceeding twenty-five per cent. of its fair cash value."

From the published report of said Board for the year 1893 (p. 10) it appears that the following resolution was adopted:

"Resolved that in the opinion of this Board, the real and personal property of this State, as returned by the Local Assessors for the year

1893, is assessed at an average rate not exceeding twenty-five per cent. of its fair cash value."

As to each of the years from 1873 to 1900, inclusive, except the years expressly above referred to, no resolution similar to those above quoted was adopted: but the reports of said Board for each year show that the column containing the assessment
181½ placed by said Board upon the capital stock of corporations, other than railroad companies, is entitled in the following language:

"Net assessment of capital stock, being excess of equalized value over the equalized value of tangible property."

182 Statement showing the capital stock and outstanding bonded indebtedness (as shown by Brown's Directory of American Gas Companies for 1900) of gas companies in Illinois, other than the People's Gas Light and Coke Company, together with the equalized value of the tangible property, and the "full value" of the capital stock and franchises of such companies as fixed by the state board of equalization for purposes of taxation in the year 1900.

	Capital stock.	Bonds.	Equalized value of tangible property.	Full value of capital stock and franchises as fixed by board.
Alton Ry. Gas & Electric Co	$500,000	$450,000	$39,276	$201,380
Aurora Gas Light Co	300,000	230,000	.....	25,000
Belleville Gas Light & Coke Co	50,000	17,000		
Union Gas & Electric Co. (Bloomington)	400,000	7,793	.....	163,965
People's Gas & Electric Light Co. (Canton)	50,000			
Centralia Light & Power Co	47,000	.....	5,100	30,500
Urbana & Champaign Gas & Electric Co. (Champaign)	500,000	435	25,045	250,000
Clinton Gas Co. (new Company)	50,000			
Danville St. Ry. & Light Co	700,000	525,000	85,000	425,000
Decatur Gas & Electric Co	400,000	372,000	35,481	250,000
Dixon Power & Lighting Co	100,000	38,500	.....	12,500
Du Quoin Light, Heat & Power Co	50,000	40,000	8,021	45,105
Elgin American Gas Co	100,000	305,000	.....	20,000
Northwestern Gas Light & Fuel Co. (Evanston)	2,000,000	.....	.....	25,000
Freeport Light & Fuel Co	100,000	36,000	5,563	57,815
Galena Gas Light Co	63,000			
Galesburg Gas & Electric Light Co	350,000	350,000	21,199	155,995
Galva Gas Light & Coke Co	30,000			
183 Jacksonville Gas Light & Coke Co	200,000	33,500	19,307	101,535
Joliet Gas Light Co	300,000	285,000	27,744	188,720
Citizens' Gas Co. (Kankakee)	150,000			
Kewanee Light & Power Co	100,000	80,000	6,315	56,575
La Grange Gas Co. (New Company)	100,000			
Peru-La Salle Gas Light & Power Co. (La Salle)	130,000	100,000		
Lincoln Gas Co	100,000	85,000	4,800	90,000
Litchfield Light, Heat & Power Co	50,000	35,000	263	6,315
Macomb Electric Light & Gas Co	50,000			
Mattoon Gas Light & Coke Co	50,000	50,000	.....	12,500
Mendota Light & Heat Co	25,000	8,800	.....	5,000
People's Power Co. (Moline)	300,000	290,000	17,923	115,000
Monmouth Gas Co	30,000	20,000	8,500	42,500
Morris Gas Co	40,000	20,000	1,496	12,480

Statement showing the capital stock, etc.—Continued.

	Capital stock.	Bonds.	Equalized value of tangible property.	Full value of capital stock and franchises as fixed by board.
Murphysboro Water Works, Electric & Gas Light Co	$80,000	$80,000	$10,817	$56,586
Ottawa Gas Light & Coke Co	100,000	.....	3,822	24,110
Paris Gas Light & Coke Co	50,000	.....	.....	10,000
Pekin Light, Heat & Power Co	100,000	100,000	7,734	63,670
People's Gas & Electric Co. (Peoria)	500,000	.....	37,422	212,110
Peoria Gas Light & Coke Co	300,000	.....	47,200	236,000
Quincy Gas & Electric Co	600,000	600,000	31,255	300,000
Rockford Gas Light & Coke Co	300,000	485,000	16,754	125,000
Springfield Gas Light Co	75,000	.....	27,264	136,320
Sterling Gas & Electric Light Co	40,000	36,000	5,560	27,800
Streator Gas & Light Co	100,000	60,000	.....	15,000
Citizens' Gas Light & Fuel Co. (Taylorville)	12,280	.....	553	10,000
North Shore Gas Co. (Waukegan)	1,000,000			
Ogden Gas Co. (Chicago)	5,000,000	.....	37,826	239,130
	$15,922,280	$4,782,235	$572,982	$3,948,610

184 *Statement Showing Aggregate Assessments Made by Local Assessors in the Years* 1873 *to* 1900.

1873	$1,210,108,863
1874	1,105,658,176
1875	1,025,428,289
1876	958,405,803
1877	892,380,972
1878	818,987,409
1879	744,742,846
1880	739,462,515
1881	746,034,852
1882	750,635,758
1883	756,422,291
1884	746,547,501
1885	733,533,951
1886	726,178,132
1887	726,078,638
1888	709,304,506
1889	711,515,026
1890	727,549,707
1891	737,504,791
1892	745,754,172
1893	760,837,855
1894	737,989,016
1895	743,840,153
1896	731,215,488
1897	713,443,706
1898	693,443,706
1899	895,869,090
1900	779,513,078

185 *Statement Showing Total Value of Personal Property as Assessed by Local Assessors for the Years* 1873 *to* 1900.

1873	$301,566,517
1874	267,469,471
1875	239,102,189
1876	212,893,542
1877	187,648,455
1878	169,815,0[illegible]
1879	151,629,963
1880	165,091,710
1881	168,674,777
1882	167,304,024
1883	167,276,876
1884	159,767,095
1885	153,333,048
1886	147,998,610
1887	148,246,088
1888	140,990,725
1889	142,726,240
1890	141,981,057
1891	143,529,274
1892	143,799,494
1893	145,136,023
1894	127,973,857
1895	129,254,545
1896	120,428,916
1897	117,098,946
1898	114,215,007
1899	183,526,987
1900	166,542,866

186 *Statement Showing the Aggregate Value of Lands as Assessed by the Local Assessors During the Years* 1873 *to* 1900.

1873	$643,196,808
1874	586,022,941
1875	552,012,889
1876	522,394,667
1877	491,723,358
1878	447,942,329
1879	412,208,278
1880	398,338,737
1881	399,267,959
1882	395,757,100
1883	394,016,653
1884	389,109,470
1885	380,488,162
1886	371,940,467
1887	365,476,933

1888	352,995,885
1889	348,604,543
1890	345,750,094
1891	343,624,261
1892	339,043,920
1893	338,064,144
1894	334,030,873
1895	332,409,485
1896	329,474,124
1897	323,837,358
1898	319,047,998
1899	315,963,816
1900	309,394,797

187 *Statement Showing the Aggregate Value of Town and City Lots as Assessed by the Local Assessors During the Years* 1873 *to* 1900.

1873	$241,820,362
1874	245,854,685
1875	228,814,552
1876	218,055,488
1877	208,540,957
1878	197,031,558
1879	177,567,698
1880	173,260,959
1881	176,023,751
1882	185,592,977
1883	193,063,755
1884	195,642,562
1885	197,741,226
1886	203,835,559
1887	210,112,460
1888	213,400,542
1889	218,332,464
1890	237,654,199
1891	249,141,918
1892	260,408,429
1893	275,029,263
1894	273,693,566
1895	280,074,344
1896	279,307,191
1897	270,633,137
1898	258,323,686
1899	393,262,409
1900	300,913,328

188 *Statement Showing Aggregate Assessment on Town and City Lots in Cook County as Assessed by the Local Assessors During the Years* 1873 *to* 1900.

1873	$90,447,759
1874	100,689,670
1875	97,795,613
1876	96,789,412
1877	94,637,338
1878	95,374,127
1879	85,791,192
1880	85,635,165
1881	87,192,987
1882	95,448,675
1883	101,456,866
1884	103,408,025
1885	107,295,606
1886	112,994,128
1887	119,437,668
1888	123,132,781
1889	126,795,669
1890	143,347,119
1891	150,690,710
1892	157,446,400
1893	164,389,327
1894	165,045,268
1895	169,252,421
1896	167,671,344
1897	158,767,689
1898	146,672,035
1899	285,717,467
1900	192,550,863

FLOOK EXHIBIT A, 11, 25, '02. H. W. B.

Comparative Statement Showing State Aggregate Average of the Value of Personal Property, as Assessed by Local Assessors for the Years 1873 to 1900

	Horses.	Cattle.	Mules and asses.	Sheep.	Hogs.	Steam engines, including boilers.	Fire or burglar-proof safes.	Billiard tables, etc.	Carriages and wagons.	Watches and clocks.	Sewing and knitting machines.	Pianos.	Melodeons and organs.
1873....	$52.41	$17.74	$59.09	$1.96	$3.17	$679.05	$105.80	$92.58	$35.86	$6.89	$32.50	$142.95	$60.39
1874....	45.92	15.63	50.39	1.62	2.60	582.67	84.63	75.21	31.22	5.61	25.31	117.63	53 02
1875....	40.95	14.27	45.75	1.51	2.90	504.27	76.83	65.56	27.72	5.65	21.56	102.57	47.22
1876....	36.92	13.37	40.70	1.44	3.35	408.85	65.85	55.86	24.92	4 55	18.32	87.68	41.58
1877....	33.90	12.38	36.92	1.30	2.56	364.89	58.94	43.14	21.94	4.01	14.01	76.43	35.99
1878....	29.63	11.19	32.39	1.15	1.50	321.94	53.30	39.14	18.88	3.62	10.44	67.42	28.95
1879....	26.63	10.15	28.82	1.10	1.36	194.15	45.19	34.23	17.13	3.18	8.42	59.23	24.66
1880....	26.56	9.95	29.77	1.29	1.53	247.99	40.71	30.44	16 56	3.11	7.71	54.68	22.36
1881....	27.66	10.04	31.50	1.29	1.86	236.64	40 23	29.98	17.01	3.00	7.29	52.42	20.55
1882 ..	28.22	10.18	31.17	1.28	2.03	247.88	38.71	31.24	15.34	2.94	6.79	51.12	19.42
1883...	28.89	10.45	32.21	1.25	2.23	240.05	32.56	31.10	14.42	2.83	6.39	49.21	18.20
1884....	28.41	10.13	31.20	1.16	1.85	221.29	33 75	31.02	13.62	2.78	5.97	46.11	16.92
1885....	27.16	9.61	29.26	.99	1.55	205.57	31.92	28.83	12.52	2.62	5.58	45.88	14.89
1886....	26.13	8.84	27.39	.95	1.32	184.78	29.29	27.55	11.72	2.53	5.25	42.39	14.09
1887....	25.80	8.31	26.79	.96	1.48	176.79	28.39	24.92	11.38	2.47	5.12	40.18	13.41
1888....	24.88	7.11	25.03	.96	1.42	167.35	26.50	24.27	10.71	2.39	4.74	38.45	12.46
1889....	24.21	6.59	24.46	.98	1.52	154.37	26.10	23 39	10.10	2.27	4.53	37.00	11.74
1890....	22.96	6.43	23.44	1.02	1.39	151.97	25.73	22.89	9.67	2.19	4.46	37.16	11.25
1891....	21.96	6.30	22.94	1.07	1.25	149.14	25.82	21.66	9.35	2.16	4.34	34.29	10 51
1892...	20.74	6.07	21.64	1.06	1.26	142.50	25.00	22.09	9.10	2.09	4.23	33.65	10.11
1893....	19.41	6.34	20.69	1.04	1.69	138.51	23.06	21.09	9.15	2.05	4.12	32.63	9.75
1894...	14.87	6.26	16.63	.84	1.43	130.37	21.84	19.31	8.55	1.98	3 98	29.74	9.11
1895....	12.84	6.68	13.84	.85	1.42	125.87	21.22	18.38	8.09	1.92	3.94	29.08	8.63
1896....	11.33	6.49	12.15	.80	1.26	121.88	20.54	18.59	7.83	1.91	3.74	27.49	8.22
1897....	10.49	6.58	11.14	.82	1.29	117.99	20.67	16.91	7.29	1.78	3.59	26.58	7.90
1898....	10.64	6.63	11.69	.86	1.22	112.96	19.40	16.43	7.02	1.72	3.48	25.75	7.36
1899....	8.20	5.03	8.83	.72	.84	94.88	10.16	13.10	4.71	1.64	2.21	19 53	4.95
1900....	9.06	4.92	9.88	.76	1.07	85.99	9.41	7.92	4.45	1.52	1.99	18.09	4.39

190 Thirty-first: Said Circuit Court erred in admitting and receiving in evidence, over the objection and exception of Defendants' counsel, the testimony of Edward J. E. Ward, as follows:—

I have been familiar for over twenty years with the concern known as the Union Stock Yards and Transit Company; said Company is a very large market for the sale of all sorts of live stock, cattle, hogs, horses and so forth. It is the sole market of the kind in Cook County for cattle, hogs, sheep and live-stock generally. I have procured, under direction, the annual reports of the Union Stock Yards and Transit Company, and from those reports and from other data I have prepared a statement showing the number of cattle, the hogs and horses received at the Union Stock Yards and Transit Company during the year- 1899 to 1901 inclusive, the total value of each kind of animals, and average value per head, compiled from those statistics. This paper which I now show you, is that compilation.

(Witness here produced Ward Exhibit B, November 12, 1903.)

From this compilation it appears that during the year 1899, 2,514,446 head of cattle, of a total value of $123,207,854, or an average value of $49 per head, was received; in the same way, for the year 1900, there were 2,729,046 head of cattle, of a total value of $136,452,300, of the average value per head of $50; and in the year 1901, without specifying the name or number of cattle, the average price received was $48 per head. In 1899 the average price per head was $9.74.

191 For the year 1900, the average price per hog received was $11.84; for the year 1901, $13.00. With reference to horses, the average price received in 1899 was $112.50; in 1900, $116; in 1901, $120. All these figures are taken from the annual reports of the Union Stock Yards and Transit Company that have been referred to.

Thirty-second: The said Circuit Court erred in admitting and receiving in evidence, over the objection and exception of defendants' counsel, the document known as Ward Exhibit B, November 12, 1903, which was as follows:—

WARD EXHIBIT B, Nov. 12, '03.

Statement showing the number of cattle, hogs and horses sold at the Union Stock Yards, Chicago, during the calendar years 1899 to 1901, inclusive, the total value of each kind of animals and the average value per head. Compiled from the annual statistical reports of the Union Stock Yard and Transit Company for the years indicated.

Cattle.

Year.	Number of head.	Total value.	Average per head.
1899	2,514,446	123,207,854	$49
1900	2,729,046	136,452,300	50
1901	3,031,396	145,507,008	48

Hogs.

1899	8,177,870	$79,734,233	9.74
1900	8,109,064	96,092,408	11.84
1901	8,290,494	107,776,422	13.00

Horses.

1899	111,611	12,556,237	112.50
1900	99,010	11,485,160	116.00
1901	109,353	13,122,360	120.00

Thirty-third: The said Circuit Court erred in admitting and receiving in evidence over the objection and exception of defendants' Counsel, a report from the Illinois State Board of Agriculture for December 1900, as follows:—

"Livestock, Hogs: There is a slight increase in the number of hogs assessed this year over 1899, the number reported being 2,829,960. In the Northern Division of the State there were 1,210,227; in the Central Division 1,138,979; and in the Southern Division 480,754. At the equalized value of $1.07 per head, they were worth $3,028,057.00. The number of corn fed hogs marketed was 2,348,855, or 83 per cent. of the number assessed, and their average live weight was 225. The heaviest hogs marketed were in Northern Illinois, where their average weight was 243 pounds. In the Central Division the average weight was 218 pounds and in the Southern Division 195 pounds. The total live weight of the hogs

marketed during the year was 527,833,094. The average price received of $4.35 per cwt. is the highest since 1894 and varied but little in different sections of the State. At this rate the total value of the hogs marketed would be $23,066,408, of which amount Northern Illinois received $10,609,820.00; Central Illinois $9,126,358; and Southern Illinois, $3,330,230.00."

"The following table shows assessed and marketed in 1899, as well as their weight and value for the last 45 years. For 1899, the assessor's returns of the number of hogs was 2,796,483, of a value of

$2,349,046.00. 83% is the estimated per cent. of the total crop that was marketed. The number of hogs that were marketed in that year was 2,321,060. The total gross weight per head was 234 pounds; the total gross weight 542,267,060 pounds. The value per cwt. gross, $3.60; and the total value of hogs marketed was $19,658,897.00.

"For the year 1900 the Assessors' returns were 2,829,960 hogs of the value of $3,028,057.00. 83% is the estimated per cent. of the total number that were marketed. The total number that were actually marketed is 2,348,855. The average gross weight per head was 225 pounds. The total gross weight, 527,833,094; the value per cwt. gross, was $4.35, and the total value received, from hogs marketed $23,066,408.00.

"More cattle were reported by the Assessors this year than last, 2,009,598 being returned. Of this number 1,085,050 were in Northern Illinois, 658,663 in Central Illinois, and 265,885 in the Southern Division of the State at the equalized value of $4.92 per cwt., (?) they were worth to the feeder $9,887,222. 23% of
194 the number assessed, or 462,197 were marketed, their average live weight being 1125 pounds. In the Northern Division of the State the average weight of the cattle marketed was 1115 pounds; in Central Illinois 1205 pounds; and in Southern Illinois but 968 pounds. The total weight of cattle marketed was 520,065,373 pounds. The average value of the cattle sold during the year was $4.25; and the total value $22,089,527.00,—the best returns for this class of live stock since 1884. Over half of this amount $11,586,603.00 should be credited to Northern Illinois, $8,209,791.00 to Central Illinois and $2,203,073 to Southern Illinois."

Thirty-fourth: The said Circuit Court erred in admitting and receiving in evidence, over the objection and exception of Defendants' Counsel, the document known as Ward Exhibit C, November 12, 1903, as follows:—

WARD EXHIBIT C., NOV. 12, '03.

Statement Showing the Number of Head of Horses, Cattle and Hogs in the State of Illinois, returned for taxation in 1900 by the Local Assessors, compared with the number of Head of Horses, Cattle & Hogs in the State of Illinois, on June 1st, 1900, according to United States Census Office returns.

Kind.	Number of head returned by local assessors in Illinois for 1900.	U. S. Census for June 1st, 1900.	Difference.
Horses	1,209,446	1,350,219	140,773
Cattle	2,438,275	3,104,010	665,735
Hogs	2,690,367	5,915,468	3,225,101

195 Thirty-fifth: The said Circuit Court erred in admitting and receiving in evidence, over the objection and exceptions

of defendants' Counsel, the following evidence admitted into the record between counsel only in the event that the same was competent and material to the issues:

"That the Union Stock Yards and Transit Company now owns and conducts in the City of Chicago a live stock yard and market for the reception, handling, sale and disposition of all kinds of live stock, and has continuously conducted and operated the same since 1865;

That at said market there is received annually a large number of horses, cattle, hogs, sheep and other live stock which are sent to said market to be sold and disposed of to purchasers there gathered from all parts of the United States and Europe;

That such live stock is received from all parts of the United States but chiefly from the territory lying west, north and south of the State of Ohio;

That in the course of business, as conducted at said market, the prices of all live stock sold in said market are recorded in books kept for that purpose by the Union Stock Yards and Transit Company, and that said Union Stock Yards and Transit Company annually and at the end of each calendar year or shortly thereafter compiled and tabulates the result of the trade in said live stock during said year at said market, and the prices realized for the said live stock, which tabulation of values is thereupon by the
196 Union Stock Yards and Transit Company printed and published generally in the form of the annual report heretofore produced and offered in evidence by the complainant at the hearing before the Master on November 12, 1903;

That from the annual report of said Union Stock Yards and Transit Company appears that the total receipts of live stock at said market since its establishment in the year 1865 up to and including the year 1991 were

65,125,851 Head of Cattle,
2,518,278 Calves,
202,197,439 Hogs,
52,142,667 Sheep,
1,644,620 Horses.

That the total sum realized for the live stock so received and sold at the said market during that period was the sum of $5,792,705,549.00."

Thirty-sixth: The said Circuit Court erred in admitting and receiving in evidence over the objections and exceptions of defendants' Counsel the testimony of Williston Fish, as follows:

I am a lawyer, in the employ of the Chicago Union Traction Company. I prepared the schedules of property for the Company for the years 1900, 1902, and 1903. I have made an investigation of the sales of stocks and bonds of the Chicago Union Traction Company and the Underlying Companies on the Stock Exchange during the entire existence of the Chicago Union Traction Company, and I have made a memorandum of the amount of such sales,
197 which is contained in this report. (Referring to Exhibit 1 to the deposition of Williston Fish.) I used the yearly re-

ports made by the newspapers called the Economist, published in Chicago, and giving the sales and prices for each year from 1899 to 1903, and I also obtained the reports from the daily papers, published in Chicago during that time. I have an intimate knowledge of the affairs of the Company and the market quotations for the last four years of the stocks and bonds of the Chicago Union Traction Company, and its underlying companies, on the stock exchange, do not give a fair indication of the real value of the property of said company. I have spent about a third of my time since 1899, in making inventories, and examining the tangible personal property of said Chicago Union Traction Company and the underlying Companies. On April 1st, 1900, all of the property of the Chicago Union Traction Company, including realty and personalty and franchises was worth less than $27,000,000, and all the property of the underlying companies at the same time was worth $12,242,972.12.

Thirty-seventh: The said Circuit Court erred in admitting and receiving in evidence, over the objection and exception of Defendants' Counsel, the document known as Exhibit 1 of the testimony of W. Fish 11/25/'03 as follows:

The following statement shows the high and low values on the Chicago Stock Exchange and the amounts dealt in of the stocks and bonds named, in each of the years 1899, 1900, 1901, 1902, and in 1903 up to November.

198 Chicago Union Traction Company.

Common Outstanding, 20,000.

	Date low.	Low.	High.	Date high.	Sales.
1899	Dec. 22	23	39	Aug. 25	40,066
1900	Dec. 15	8½	29½	Jan. 5	47,577
1901	May 9	9½	20⅞	May 28	126,544
1902	Jan. 16	10	22⅝	Apr. 29	134,032
1903	June 19	3½	17	Jan. 13	23,245

199 Chicago Union Traction Company.

Preferred Outstanding, 12,000,000.

	Date low.	Low.	High.	Date high.	Sales.
1899	Dec. 22	72	87¾	Aug. 31	28,158
1900	Dec. 15	40	78½	Jan. 2	45,211
1901	Dec. 19	47	61½	June 7	41,222
1902	Dec. 23	45	59½	Apr. 29	19,420
1903	Apr. 22	26	51	Jan. 13	8,365

200 West Chicago Street Railway Company.

Issued	13,189,000
Owned by C. U. T. Co.	3,216,000
Outstanding	9,973,000

Year.	Date low.	Low.	High.	Date high.	Sales.
1899	Jan. 3	91½	124¼	Sept. 1	127,989
1900	Dec. 22	96½	113	Feb. 5	31,405
1901	Nov. 21	90	108	Mar. 15	30,108
1902	Dec. 15	83	103¼	May 2	14,680
1903	Oct. 10	50	93	Jan. 14	8,717

201 North Chicago Street Railroad Company.

Stock issued	7,920,000
Owned by C. U. T.	2,022,600
Outstanding	5,897,400

Year.	Date low.	Low.	High.	Date high.	Sales.
1899	Jan. 24	217	250½	May 1	20,256
1900	Dec. 26	190	228	Feb. 7	3,729
1901	Dec. 2	180	207	Mar. 1	4,694
1902	Dec. 22	158	199¾	Apr. 29	4,917
1903	Oct. 5	95	175	Jan. 14	4,122

202 Chicago Consolidated Traction Company.

4½'s, $—.

Year.	Date low.	Low.	High.	Date high.	Sales.
1899					
1900					
1901					
1902	Feb. 11	67	80	Mar. 27	219,000
1903	Oct. 20	60	70½	Apr. 2	136,000

203 North Chicago Street Railroad Company.

First Mortgage, 5's, 1906 { Total, 1906 & 1909, $3,171,000.

The 1906's are:

Year.	Date low.	Low.	High.	Date high.	Sales.
1899	July 21	105¼	108½	Oct. 27	23,500
1900	Dec. 31	104⅜	105⅛	Dec. 19	16,000
1901	Oct. 4	104	104½	July 3	10,500
1902	Feb. 28	103	103	May 5	31,500
1903	June 4	97	100	Mar. 9	19,000

The 1909's are:

1899					
1900	Nov. 19	105⅞	106¾	May 16	24,000
1901	Oct. 9	106	106½	Aug. 6	19,000
1902	Apr. 2	104	104¼	Feb. 24	11,000
1903	June 5	97	99½	Mar. 26	9,000

204 North Chicago City Railway Company.

4½'s, 2,500,000.

Year.	Date low.	Low.	High.	Date high.	Sales.
1899	Nov. 21	107	109¾	July 14	23,000
1900	Feb. 9	107⅛	108¾	June 5	54,000
1901	Dec. 17	105	108⅓	May 21	53,000
1902	Aug. 1	105	107	Apr. 10	14,000
1903	May 7	98	103	Jan. 29	12,000

205 West Chicago Street Railroad Company, Consolidated.

5's, $6,114,000.

Year.	Date low.	Low.	High.	Date high.	Sales.
1899	Jan. 3	94¾	107½	July 12	2,924,000
1900	Dec. 17	100	104½	Jan. 5	900,000
1901	Dec. 26	98⅞	104½	Apr. 13	749,500
1902	Dec. 11	94	101½	Apr. 4	340,000
1903	Sept. 12	80	97¼	Jan. 14	135,000

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206 West Chicago Street Railroad Company.

Debenture 6's, $497,000.

Year.	Date low.	Low.	High.	Date high.	Sales.
1899	Mar. 6	100	102	June 14	158,000
1900	July 19	100	100½	Oct. 30	89,000
1901	Nov. 25	100	100⅞	Sept. 4	37,000
1902	Sept. 23	99½	100¼	May 5	9,000
1903	May 31	87	106	Jan. 13	19,000

207 West Chicago Street Railroad Company.

1st Mortgage, 5's.

Year.	Date low.	Low.	High.	Date high.	Sales.
1899	Apr. 11	109	112	July 13	104,000
1900	Jan. 20	108	111½	June 21	111,000
1901	Dec. 14	109½	111	May 13	123,000
1902	Dec. 29	104¾	109½	May 1	141,000
1903	July 23	96	104	Feb. 25	78,000

208 Chicago West Division Railway Company.

4,016,000 4½'s.

Year.	Date low.	Low.	High.	Date high.	Sales.
1899					
1900	Apr. 19	107¾	109	Apr. 4	7,000
1901	Oct. 22	108½	110	Mar. 7	6,000
1902	Mar. 24	109½	109½	Nov. 3	5,000
1903	Oct. 1	93	105	Jan. 20	35,000

209 Thirty-eighth. The said Circuit Court erred in admitting and receiving in evidence over the objection and exception of defendants' counsel the testimony of William G. Beale, as follows:—

"I appeared before the State Board of Equalization, and gave to said Board detailed information in reference to the value of the property of the Chicago Edison Company, and handed said Board a pamphlet entitled 'Report of Chicago Edison Company for the fiscal year ending March 31, 1900,' which was offered and received in evidence as Complainant's Exhibit A 10/29/02, H. W. B.; that I compiled the information contained in said report in reference to the value of the capital stock, and the amount of bonded indebtedness. A part of the information I got from direct investigation, and part from public reports, and a part from employing an agent to go out and find the facts.

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Thirty-ninth. The said Circuit Court erred in admitting and receiving in evidence over the objection and exception of Defendants' Counsel, the documents marked Complainant's Exhibit A, which document is attached to the bill of complaint in the case of the Chicago Edison Company *vs.* Samuel B. Raymond *et al.*, in the Circuit Court of the United States for the Northern District of Illinois, No. 26,163.

210 Fortieth. The said Circuit Court erred in admitting and receiving in evidence over the objection and exception of defendants' counsel, the document entitled Complainant's Exhibit B, which document is attached to the bill of complaint in the case of the Chicago Edison Company *vs.* Samuel B. Raymond *et al.*, now pending in the Circuit Court of the United States for the Northern District of Illinois, No. 26,163.

Forty-first. The said Circuit Court erred in admitting and receiving in evidence, over the objection and exception of defendants' counsel, the testimony of Arthur D. Wheeler, as follows:

"I appeared before the State Board of Equalization while it had under consideration the proper capital stock assessment for the Chicago Telephone Company for the year 1900, and answered questions and gave information to said Board, concerning the capital stock valuations of said Company. One of the members of the Capital Stock Committee of the Board stated that the Committee could not or would not act until they had received word as to the wishes or ideas of the Court. At about this stage one of the attorneys for the relators in the Mandamus proceeding came into Court with a paper in his hand, and I was ushered out, and fifteen or thirty minutes after that the Committee reported the assessment against the Chicago Telephone Company, which was afterwards accepted by the State Board.

211 Forty-second. The said Circuit Court erred in admitting and receiving in evidence over the objection and exception of defendants' counsel, the following evidence of Fred E. Smith:

"The ordinary operation of a street railroad results in a gradual depreciation of its plant. A charge ought to be made every month on account of such depreciation. Such depreciation in the case of the Chicago Union Traction Company amounts to a little over seven and one half per cent. per annum of the entire value of the property. No such depreciation had been charged against the Chicago Union Traction Company on its books. I have prepared a statement of the income and expenses of the Chicago Union Traction Company for the fiscal year ending June 30, 1900. It is that which I hand you. (Referring to Complainant's Exhibit 1, set forth in the Master's report, filed June 9, 1902.) I have made a compilation upon the lines laid down by Judges Grosscup and Humphrey in their opinion, as to what the taxes would amount to if they were fixed at the rate of 8.035. I capitalized the true net income of -2,057,352.61 upon a six per cent. basis, which resulted in a capitalization of $34,289,210.17. I equalized these on a seven per cent. basis, which produces a capitalization of $24,002,447.12; took one-fifth of this for the assessed value, which was $4,800,489.42. As

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computed on the basis of that rate, 8.035 it produces $385,719.32. I then deducted the taxes already paid of $239,097.22, leaving the amount to be paid $146,622.10.

212 Forty-third. The said Circuit Court erred in admitting and receiving in evidence, over the objection and exception of Defendants' counsel, Exhibit Number 1, offered and received in evidence in the case of the Chicago Union Traction Company *vs.* Samuel B. Raymond *et al.* No. 26,609, contained in the Master's Report, filed in said cause, June 9, in the following words:

Chicago Union Traction Company.

Income Account, Year Ending June 30th, 1900.

Income from all sources:		
Passenger Receipts	$7,468,797.98	
Chartered Cars	2,122.50	
Mail	6,477.58	
Advertising	33,576.95	
Rent of Land and Buildings	35,622.14	
Rent of Tracks and Terminals	10,000.00	
Interest on Deposits	17,690.11	
Miscellaneous	3,336.03	
Total Income from all sources		$7,577,623.29
Expenses:		
Maintenance—Way & Structures	193,666.90	
Maintenance—Equipment	381,082.87	
Transportation	2,836,167.01	
General Expenses	1,119,962.07	
Interest on Loans	41,776.80	
213 Depreciation, being 6% of $9,364,928.57, full value of personal property, said full value being obtained upon the assumption that the Assessors' full valuation of said personal property for the year 1900, to-wit: $6,555,450, was only 70% of real value	561,895.71	
Total Expenses		$5,134,551.38
Net earnings applicable to payment of Bond interest, rentals and taxes		$2,443,071.91
Deducting taxes for 1900, already paid		239,097.22
Leaving net income		2,203,974.71

This amount will be further reduced by the amount of taxes to be paid under the decision rendered by Judges Grosscup and Humphreys."

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Forty-fourth. The said Circuit Court erred in admitting and receiving in evidence, over the objection and exception of Defendants' Counsel, oral testimony for the purpose of explaining, varying and contradicting the official acts, records and proceedings of the State Board of Equalization for the years 1900 and 1901, wherein and whereby said Board made the assessment against the property of the complainant sought to be enjoined in this cause.

Forty-fifth. The said Circuit Court erred in refusing and failing to hold that parol evidence was incompetent, for the purpose of explaining, varying or contradicting the official acts, records and proceedings of the State Board of Equalization of the State
214 of Illinois, in reference to the assessments on the capital stock of the complainant, made by the said board in the year 1901, for the year 1900.

Forty-sixth. The said Circuit Court erred, in failing and refusing to hold that inasmuch as complainant contributed to the expense of said Mandamus suit, instituted in the Circuit Court of Sangamon County, Illinois, against the State Board of Equalization of the State of Illinois, for the purpose of compelling said Board to assess the capital stock of the complainant and the other corporations therein named, for the year 1900, and inasmuch as the complainant participated in directing and controlling the conduct of said litigation, therefore the complainant was concluded by the outcome of said suit, and the proceedings of said State Board of Equalization, and the assessment of the Capital Stock of Complainant for the year 1900, made by the said State Board of Equalization of the State of Illinois, in obedience to said writ of Mandamus, and said Circuit Court erred in failing and refusing to hold, that all of the aforesaid proceedings are *res adjudiciata*, and constitute an estoppel by judgment and verdict against the Complainant, conclusively establishing the validity and regularity of the said assessment complained of in the bill of complaint in this cause.

In all of which respects these defendants claim that the aforesaid judgment and decree of said Circuit Court are erroneous,
215 illegal and invalid, and therefore these defendants pray that the said judgment and decree may be reversed, set aside and held for nought.

HARRY A. LEWIS,
WILLIAM F. STRUCKMAN,
JAMES HAMILTON LEWIS, AND
DAVID K. TONE,
Solicitors for the Above-named Defendants.

(Endorsed:) Filed Aug. 10, 1906. Marshall E. Sampsell, Clerk.

216 And on to-wit: the tenth day of August, being one of the days of the regular July term of said Court, 1906, in the record of proceedings thereof in said entitled cause before the Hon. Peter S. Grosscup, Circuit Judge, appears the following entry to-wit:

Order of August 10, 1906, Allowing Appeal.

26169.

THE SOUTH CHICAGO CITY RAILWAY COMPANY
vs.
SAMUEL B. RAYMOND, County Treasurer of Cook County, Illinois, and *ex-officio* County Collector, Cook County, Illinois and JOHN J. HANBERG, His Successor as County Treasurer of Cook County, Illinois, and *ex-officio* County Collector of Cook County, Illinois, and *ex-officio* Town Collector of the Town of Hyde Park, and THE CITY OF CHICAGO.

Upon motion of David K. Tone, Esq., solicitor for the defendants, and on filing petition for an order allowing an appeal, together with assignment of errors, it is Ordered that an appeal be and is hereby allowed to the Supreme Court of the United States from the decree entered herein on the twenty-fifth day of July, 1906, and that the amount of the bond upon appeal be and hereby is fixed at the sum of two hundred dollars. Said bond to be approved by the Clerk of this Court.

217 And on to-wit: the fifth day of September, 1906, there was filed in the clerk's office of said Court in said entitled cause a certain Bond on Appeal in words and figures following to-wit:

218 Know all men by these presents, That we, Samuel B. Raymond, County Treasurer of Cook County, Illinois, and *ex-officio* County Collector of Cook County, Illinois, and John J. Hanberg, his successor in office as County Treasurer of Cook County, Illinois, and *ex-officio* County Collector of Cook County, Illinois, and *ex-officio* Town Collector of the Town of Hyde Park, and The City of Chicago, as principals and National Surety Company, as surety, are held and firmly bound unto South Chicago City Railway Company in the full and just sum of Two Hundred ($200.00) Dollars, to be paid to the said South Chicago City Railway Company its certain attorney, successors or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly and severally, by these presents.

Sealed with our seals, and dated this 30th day of August, in the year of our Lord one Thousand nine hundred and six.

Whereas, lately at a session of the Circuit Court of the United States for the Northern District of Illinois, Eastern Division, on July 25th, A. D. 1906, in a suit depending in said Court, between South Chicago City Railway Company, complainant, and Samuel B. Raymond, County Treasurer of Cook County, Illinois, and *ex-officio* County Collector of Cook County, Illinois, and John J. Hanberg, his successor in office as County Treasurer of Cook County, Illinois, and *ex-officio* County Collector of Cook County, Illinois, and *ex-officio* Town Collector of the Town of Hyde Park, and The City of Chicago, defendants, a decree was rendered against the said defendants above

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named, restraining them from collecting certain taxes levied
219 against the property of complainant, and the said defendants above named, having obtained an appeal to the Supreme Court of the United States and filed a copy thereof in the Clerk's office of the said Court to reverse the decree in the aforesaid suit,

Now, the condition of the above obligation is such, that if the said Samuel B. Raymond, County Treasurer of Cook County, Illinois, and *ex-officio* County Collector of Cook County, Illinois, and John J. Hanberg, his successor in office as County Treasurer of Cook County, Illinois, and *ex-officio* County Collector of Cook County, Illinois, and *ex-officio* Town Collector of the Town of Hyde Park, and The City of Chicago, shall prosecute their appeal to effect, and answer all damages and costs if they fail to make their plea good, then the above obligation to be void; else to remain in full force and virtue.

S. B. RAYMOND, [SEAL.]
County Treasurer of Cook County and ex-officio County Collector of Cook County, Illinois.
JOHN J. HANBERG, [SEAL.]
Successor to Samuel B. Raymond, as County Treasurer of Cook County, Illinois, and ex-officio County Collector of Cook County Illinois, and ex-officio Town Collector of the Town of Hyde Park.
[SEAL.] CITY OF CHICAGO,
By E. F. DUNNE, *Mayor.*

Attest:
A. C. ANSON, *City Clerk.*

NATIONAL SURETY COMPANY,
[SEAL.] CHARLES S. CRAIN,
Attorney in Fact.

Approved:
MARSHALL E. SAMPSELL, *Clerk.*

(Endorsed:) Filed Sep. 5, 1906. Marshall E. Sampsell, Clerk.

220 And on to-wit: the twenty sixth day of September, 1906, there was filed in the clerk's office of said Court in said entitled cause a certain Stipulation in words and figures following to-wit:

Stipulation.

In the Circuit Court of the United States, Northern District of Illinois, Eastern Division Thereof.

In Chancery. No. 26169.

SOUTH CHICAGO CITY RAILWAY COMPANY, Complainant,
vs.
SAMUEL B. RAYMOND, County Treasurer Cook County, Illinois, and *ex-officio* County Collector of Cook County, Illinois, and JOHN J. HANBERG, His Successor as County Treasurer of Cook County, Illinois, and *ex-officio* County Collector of Cook County, Illinois, and *ex-officio* Town Collector of the Town of Hyde Park, and the City of Chicago, Defendants.

It is hereby stipulated between Samuel B. Raymond, County Treasurer of Cook County, Illinois, and *ex-officio* County Collector of Cook County, Illinois, and John J. Hanberg, his successor as Treasurer of Cook County, Illinois, and *ex-officio* County Collector of Cook County, Illinois, and *ex-officio* Town Collector of the Town of Hyde Park and The City of Chicago, appellants, and The South Chicago City Railway Company, appellee, that a complete transcript of the record in the case of the Chicago Union Traction Company *vs.* Samuel B. Raymond, County Collector *et al.*, No. 26609, in the Circuit Court of the United States, for the Northern District of Illinois, as per præcipe now on file with the Clerk of said Court, shall be filed in the Supreme Court of the United States by counsel for appellants.

221 And it is further stipulated that the Clerk of said Circuit Court may prepare and transmit to the Clerk of the Supreme Court of the United States at Washington, D. C., the following pleadings, proceedings and papers, which are different in this cause from the corresponding pleadings, proceedings and papers in said cause of the Chicago Union Traction Company *vs.* Samuel B. Raymond *et al.*, No. 26609:

1st. Bill of complaint, filed February 13th, 1902;

2nd. Answer of the defendants, filed June 28th, 1902;

3rd. Master's report, filed June 9th, 1902, together with the depositions of all witnesses filed on said 9th day of June, 1902, and attached to said Master's report, together with all exhibits accompanying the same;

4th. Answer of City of Chicago, filed May 19th, 1906;

5th. Final decree, entered July 25, 1906;

6th. Order entered August 10th, 1906, correcting final decree as of July 25th, 1906;

7th. Petition for appeal and assignment of errors of defendants, filed August 10th, 1906;

8th. Appeal bond of defendants, filed September 5th, 1906;

And, inasmuch as many of the papers, pleadings, proceedings

and orders in this cause are identical with the corresponding papers, pleadings, proceedings and orders in said cause of the Chicago Union Traction Company *vs.* Samuel B. Raymond *et al.*

222 Now, it is hereby further agreed that for the purpose of considering this appeal, the Transcript of the Record in this cause to be used in the Supreme Court of the United States shall consist of the papers, pleadings, proceedings and orders contained in the Transcript of the Record filed in the said cause of the Chicago Union Traction Company *vs.* Samuel B. Raymond, *et al.*, in the Supreme Court of the United States, which it is hereby agreed are identical with the corresponding pleadings, papers, proceedings and orders had in this cause, except in so far as the transcript in this cause has been made up by filing a transcript of the papers, records, proceedings and orders above specifically enumerated. Provided, however, that either party hereto may at any time take up to said Supreme Court by supplemental Transcript of Record, any and all other papers, pleadings, proceedings or orders had in this cause in the said Circuit Court and not above specifically enumerated.

And it is further stipulated that the printed Transcript of the record in this cause may be made up as follows: the pleadings, proceedings and papers in this cause shall be printed in their order, except where such pleadings, proceedings or papers consist of the record filed in the said cause of the Chicago Union Traction Company *vs.* Samuel B. Raymond *et al.*, when, instead of printing the said record in said last mentioned cause in full in the places where the same belongs, reference shall be made to the page in the

223 printed transcript of the record in said cause of the Chicago Union Traction Company *vs.* Samuel B. Raymond *et al.*, on which is printed said corresponding pleading, proceeding or paper, and a complete printed transcript of the record in said cause of the Chicago Union Traction Company *vs.* Samuel B. Raymond *et al.* shall be attached to and bound in with said printed Transcript of the Record in this cause.

SOUTH CHICAGO CITY RAILWAY COMPANY,
By PECK, MILLER & STARR,
Its Solicitors.
CITY OF CHICAGO, SAMUEL B. RAYMOND, COUNTY COLLECTOR, AND ALL OTHER DEFENDANTS,
By HARRY A. LEWIS,
WILLIAM F. STRUCKMANN,
JAMES HAMILTON LEWIS AND
DAVID K. TONE,
Their Solicitors.

(Endorsed:) Filed Sept. 26, 1906. Marshall E. Sampsell, Clerk.

224 And on to-wit: the twenty-sixth day of September, 1906, there was filed in the clerk's office of said Court in said entitled cause a certain Stipulation extending time to file transcript

of record in Supreme Court. Said Stipulation is in words and figures following to-wit:

Stipulation Extending Time to File Transcript of Record.

In the Circuit Court of the United States, Northern District of Illinois, Eastern Division.

No. 26169.

SOUTH CHICAGO CITY RAILWAY COMPANY, Complainant,

vs.

SAMUEL B. RAYMOND ET AL., Defendants.

It is hereby stipulated between the parties to the above entitled cause, by their respective counsel, that the defendants and appellants' time for filing a transcript of record in the above entitled cause, in the Supreme Court of the United States, be extended for twenty (20) days, that is, up to and including the 29th day of September, 1906.

PECK, MILLER & STARR,
Counsel for Complainant.
HARRY A. LEWIS,
WM. F. STRUCKMANN,
JAMES HAMILTON LEWIS, AND
DAVID K. TONE,
Counsel for Defendants.

(Endorsed:) Filed Sept. 26, 1906, Marshall E. Sampsell, Clerk.

225 NORTHERN DISTRICT OF ILLINOIS, *Eastern Division*, *ss:*

I, Marshall E. Sampsell, Clerk of the Circuit Court of the United States for the Northern District of Illinois, do hereby certify the above and foregoing to be a true and complete transcript of the proceedings had of record in said court, and made in accordance with Stipulation filed in the cause entitled The South Chicago City Railway Company *vs.* Samuel B. Raymond, County Treasurer of Cook County, Illinois, and *ex-officio* County Collector Cook County, Illinois and John J. Hanberg, his successor as County Treasurer of Cook County, Illinois, and *ex-officio* County Collector of Cook County, Illinois, and *ex-officio* Town Collector of the Town of Hyde Park and The City of Chicago, General Number 26,169, as the same appear from the original records and files of said Court now remaining in my custody and control.

In testimony whereof, I have hereunto set my hand and affixed

the seal of said Court at my office in the City of Chicago, in said District, this 27th day of September, 1906.

[Seal Circuit Court U. S., Northern Dist. Illinois, 1855.]

MARSHALL E. SAMPSELL, *Clerk*.

Endorsed on cover: File No. 20,392. N. Illinois C. C. U. S. Term No. 427. Samuel B. Raymond, county treasurer of Cook county, Illinois, and *ex officio* county collector of Cook county, Illinois; John J. Hanberg, his successor as such county treasurer and county collector, *et al.*, appellants, *vs.* The South Chicago City Railway Company. Filed October 2d, 1906. File No. 20,392.

IN THE

SUPREME COURT OF THE UNITED STATES,

OCTOBER TERM, A. D. 1906.

Samuel B. Raymond, County Treasurer of Cook County, Illinois, *et al.*, *Appellants*,
vs.
South Chicago City Railway Company, *Appellee.*
} No. 427.

NOTICE OF MOTION TO ADVANCE AND SET DOWN FOR HEARING.

To:

PECK, MILLER & STARR,
Solicitors for South Chicago City Railway Company.

Please take notice that on Monday, the 10th day of December, 1906, we shall appear before the Supreme Court of the United States in the City of Washington, D. C., at the opening of court on said day, or as soon thereafter as counsel can be heard, and move that the above entitled cause be taken up out of its order upon the docket of said court and advanced and set down for hearing upon some particular day of this term of said court, to be fixed by said court.

A copy of said motion, embodying the reasons in support thereof, together with a printed copy of the final decree entered in said cause is herewith handed you, which will be filed with the clerk of said court.

HARRY A. LEWIS,
WILLIAM F. STRUCKMANN,
JAMES HAMILTON LEWIS, and
DAVID K. TONE,
Solicitors for Appellants.

Received a copy of the above notice and of said motion and final decree this ..... day of December, A. D. 1906.

IN THE

SUPREME COURT OF THE UNITED STATES,

OCTOBER TERM, A. D. 1906.

Samuel B. Raymond, County Treasurer of Cook County, Illinois, *et al.*, *Appellants*,
vs.
South Chicago City Railway Company, *Appellee.*
No. 427.

MOTION TO ADVANCE AND SET DOWN FOR HEARING.

Now come Samuel B. Raymond, County Treasurer of Cook County, etc., and John J. Hanberg, his successor, etc., and The City of Chicago, appellants in the above entitled cause, and move the court that this cause be taken up out of its order upon the docket of this court and be advanced and set down for hearing on some particular day of this term, to be fixed by this court.

In support of said motion, the said appellants beg leave to submit the following reasons:

First: It appears from the final decree in this cause (Original Record, page 148, a printed copy of which finela decree is filed herewith, pages 1 to 5) that the Circuit Court, by said final decree, perpetually enjoined an assessment on the capital stock and franchises of the complainant, made by the State Board of Equalization of the State of Illinois,

and aggregating $433,886, and the taxes levied pursuant thereof, and it therefore appears that the proceeding in the court below was one which enjoined the revenue officers of the State of Illinois from collecting an assessment made under the authority of the laws of the State of Illinois.

Second: It appears from the final decree in this cause, above referred to, that a question of momentous importance to the People of the State of Illinois, and a constitutional question of great importance in reference to the jurisdiction of a federal court to enjoin state officials from enforcing the revenue laws of the state is involved in this appeal.

Third: It appears from the final decrees entered in each of the seven causes that were heard together in the court below (printed copies of which final decrees are filed in each of the said respective causes), that all of said causes involve the same questions, and that by the action of the Circuit Court in enjoining the collection of the capital stock assessments made against each of said corporations, respectively, about $2,000,000 of the taxes levied by the State Board of Equalization of the State of Illinois for the year 1901 was perpetually enjoined, and that by reason of the vast sum of money so enjoined, and by reason of the importance of securing a speedy determination of the validity of said assessments, this cause should be advanced and heard out of its regular order.

HARRY A. LEWIS,
WILLIAM F. STRUCKMANN,
JAMES HAMILTON LEWIS, and
DAVID K. TONE,
Solicitors for Appellants.

Office Supreme Court, U. S.
FILED
DEC 11 1906
JAMES H. McKENNEY,
Clerk.

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, A. D. 1906.

No. 718

SAMUEL B. RAYMOND, County Treasurer of Cook County, Illinois, et al.,
Appellants,

vs.

SOUTH CHICAGO CITY RAILWAY COMPANY,
Appellee.

COPY OF FINAL DECREE AND OF STIPULATION.

Appeal from the Circuit Court of the United States for the Northern District of Illinois.

IN THE CIRCUIT COURT OF THE UNITED STATES,
NORTHERN DISTRICT OF ILLINOIS,
EASTERN DIVISION.

The South Chicago City Railway Company, *Complainant,* *vs.* James Baird, Collector of the Town of Hyde Park, and Samuel B. Raymond, County Collector, *et al.*, *Defendants.*	In Equity. No. 26,169.

DECREE.

Record.

This cause came on to be further heard at this term, and was argued by counsel; and thereupon,
148 upon consideration thereof, it is ordered that all objections and exceptions to the Master's reports be, and the same are hereby overruled, and that the Master's reports and each of them, be, and they are hereby, approved and confirmed; and the court finds that it has jurisdiction of all of the parties hereto and of the subject matter hereof, and that all the material allegations of the bill of complaint are sustained by the evidence, and that the equities of the case are with the complainant; and thereupon the court doth order, adjudge and decree as follows:

That the assessment made by the State Board of Equalization of the State of Illinois, at its session in 1901, against the complainant the South Chicago City Railway Company, upon its capital stock for the year 1900 (the net amount of said assessment being $433,886), was made under the coercive in-

fluence of a writ of mandamus issued by the Circuit Court of Sangamon County, in the State of Illinois, and does not represent the real or independent judgment of the said State Board of Equalization, and that the assessments made by State Board of Equalization, at its meeting held in 1901, upon the capital stock of the said complainant, and upon the capital stock of the other corporations named in the writ of mandamus above mentioned, for the year 1900, was in fact made upon a materially different basis from that upon which the capital stock of all other corporations of the same class was assessed for the year 1900 by the said State Board of Equalization, and also upon a basis materially different from that upon which all other taxable property in the State of Illinois was assessed for the year 1900; that said assessment made in 1901 upon the capital stock of the complainant for the year 1900, was made under the coercive influence of said mandamus without the exercise or application of the judgment of the State Board of Equalization, or the members thereof, to the ascertainment of the value of said capital stock, and without the State Board of Equalization, either in fact or in form, taking into consideration the basis upon which all other taxable property in the State of Illinois was assessed and taxed for the year 1900, and without in fact or in form equalizing the valuation or assessment of the capital stock of said complainant for the year 1900 with all or any of the assessments made upon the other taxable property in the State of Illinois for the year 1900, with the result that the said assessment upon the capital stock of complainant, made in the year 1901 for

the year 1900, was made on a much higher basis than that upon which the other taxable property of the State of Illinois was assessed and taxed for the year 1900; that the said assessment, made in the year 1901 for the year 1900, by the said State Board of Equalization, was made without notice thereof to the complainant or opportunity to the complainant to appear and be heard in respect thereto; and that in making said assessment said State Board of Equalization did not take into consideration the fact that the capital stock tax on complainant's capital stock for the year 1900 had been theretofore assessed by the State Board of Equalization and had been theretofore paid by the complainant; that said assessment upon said capital stock for the year 1900 was and is unjust and inequitable; that the making of said assessment as aforesaid in 1901, upon the capital stock of the said complainant, and the extension of taxes thereon, and the attempt to enforce the payment of such taxes so extended, from complainant, was and is a violation of the Fourteenth Amendment to the Constitution of the United States, and that the attempt to enforce the collection from complainant of the taxes extended on said reassessment will, unless restrained, result in a multiplicity of suits, and in irreparable injury to the complainant.

An order was entered herein on the 28th day of June, 1902, as a condition precedent to the granting of the temporary relief prayed for in the bill of complaint herein, that complainant should pay in addition to the tax already paid upon the first or original capital stock assessment for the year 1900,

the further sum of $184.88, making a total capital stock tax to be paid by the complainant for the year 1900 of $6,592.93, which is found and decreed by the court to be all that complainant should be required to pay as taxes for the year 1900. Said additional sum of $184.88 has been paid by complainant to the County Treasurer of Cook County, in compliance with said order, making the total amount paid by complainant, as taxes for the year 1900, the said sum of $6,592.93.

It is therefore ordered, adjudged and decreed that the said assessment of $433,886, on the capital stock of complainant, made by the State Board of Equalization in the year 1901 for the year 1900, and all taxes levied and extended thereon, and now held upon the books of the tax collecting agencies in the City of Chicago, County of Cook and State of Illinois for collection, be and they are, and each of them is, illegal, null and void, and that the defendants James Baird, Town Collector of the Town of Hyde Park, and his successor and successors in office, as such town collector, and the defendant, Samuel B. Raymond, County Treasurer of Cook County, Illinois, and *ex-officio* County Collector of said county, and his successor and successors in office, as such county treasurer and *ex-officio* county collector, and the defendant the City of Chicago, and each of them and each and every of their respective agents, deputies, servants, attorneys and representatives be, and they are and each of them is, hereby perpetually enjoined and restrained from in any wise levying or collecting, or in any manner attempting, directly or indirectly,

to levy or collect or to enforce against the complainant or against any of its property, said tax or taxes, or any or either of them, or any part thereof.

It is further ordered, adjudged and decreed that the costs of this cause be taxed against complainant.

P. S. Grosscup.

IN THE CIRCUIT COURT OF THE UNITED STATES,
NORTHERN DISTRICT OF ILLINOIS,
EASTERN DIVISION THEREOF.

South Chicago City Railway Company, *Complainant,* *vs.* Samuel B. Raymond, County Treasurer of Cook County, Illinois, and *ex-officio* County Collector of Cook County, Illinois, and John J. Hanberg, his successor as County Treasurer of Cook County, Illinois, and *ex-officio* County Collector of Cook County, Illinois, and *ex-officio* Town Collector of the Town of Hyde Park, and the City of Chicago, *Defendants.*	In Chancery. No. 26,169

IT IS HEREBY STIPULATED between Samuel B. Raymond, County Treasurer of Cook County, Illinois, and *ex-officio* County Collector of Cook County, Illinois, and John J. Hanberg, his successor as Treasurer of Cook County, Illinois, and *ex-officio* County Collector of Cook County, Illinois, and *ex-officio* Town Collector of the Town of Hyde Park, and the City of Chicago, appellants, and the South Chicago City Railway Company, appellee, that a complete transcript of the record in the case of the *Chicago Union Traction Company* v. *Samuel B. Raymond, County Collector, et al.,* No. 26,609, in the Circuit Court of the United States, for the Northern District of Illinois, as per præcipe now on file with the clerk of said court, shall be filed in the Supreme

Court of the United States by counsel for the appellants.

AND IT IS FURTHER STIPULATED that the clerk of said Circuit Court may prepare and transmit to the clerk of the Supreme Court of the United States, at Washington, D. C., the following pleadings, proceedings and papers, which are different in this cause from the corresponding pleadings, proceedings and papers in said cause of the *Chicago Union Traction Company* v. *Samuel B. Raymond et al.*, No. 26,609:

1st. Bill of complaint, filed February 13, 1902;

2nd. Answer of the defendants, filed June 28, 1902;

3rd. Master's report, filed June 9, 1902, together with the depositions of all witnesses filed on said 9th day of June, 1902, and attached to said Master's report, together with all exhibits accompanying the same;

4th. Answer of City of Chicago, filed May 19, 1906;

5th. Final decree, entered July 25, 1906;

6th. Order entered August 10, 1906, correcting final decree as of July 25, 1906;

7th. Petition for appeal and assignment of errors of defendants, filed August 10, 1906;

8th. Appeal bond of defendants, filed September 5, 1906;

AND, inasmuch as many of the papers, pleadings, proceedings and orders in this cause are identical with the corresponding papers, pleadings, proceedings and orders in said cause of the *Chicago Union Traction Company* v. *Samuel B. Raymond et al.*

Now, it is Hereby Further Agreed that for the purpose of considering this appeal, the transcript of the record in this cause to be used in the Supreme Court of the United States shall consist of the papers, pleadings, proceedings and orders contained in the transcript of the record filed in the said cause of the *Chicago Union Traction Company* v. *Samuel B. Raymond et al.*, in the Supreme Court of the United States, which it is hereby agreed is identical with the corresponding pleadings, papers, proceedings and orders had in this cause, except in so far as the transcript in this cause has been made up by filing a transcript of the papers, records, proceedings and orders above specifically enumerated. Provided, however, that either party hereto may at any time take up to said Supreme Court by supplemental transcript of the record, any and all other papers, pleadings, proceedings or orders, had in this cause in the said Circuit Court and not above specifically enumerated.

And it is Further Stipulated that the printed transcript of the record in this cause may be made up as follows: The pleadings, proceedings and papers in this cause shall be printed in their order, except where such pleadings, proceedings or papers consist of the record filed in the said cause of the *Chicago Union Traction Company* v. *Samuel B. Raymond et al.*, when, instead of printing the said record of said last mentioned cause in full in the places where the same belongs, reference shall be made to the page in the printed transcript of the record in said cause of the *Chicago Union Traction Company* v. *Samuel B. Raymond et al.*, on

which is printed said corresponding pleading, proceeding or paper, and a complete printed transcript of the record in said cause of the *Chicago Union Traction Company* v. *Samuel B. Raymond et al.* shall be attached to and bound in with said printed transcript of the record in this cause.

SOUTH CHICAGO CITY RAILWAY COMPANY,
By PECK, MILLER & STARR,
Its Solicitors.

CITY OF CHICAGO, SAMUEL B. RAYMOND, COUNTY COLLECTOR, AND ALL OTHER DEFENDANTS,
By HARRY A. LEWIS,
WILLIAM F. STRUCKMANN,
JAMES HAMILTON LEWIS and
DAVID K. TONE,
Their Solicitors.

IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1906.

No. 427

SAMUEL B. RAYMOND, County Treasurer of Cook County, Illinois, and *ex officio* County Collector of Cook County, Illinois; JOHN J. HANBERG, his Successor as such County Treasurer and County Collector et al.,

Appellants,

vs.

THE SOUTH CHICAGO CITY RAILWAY COMPANY.

Appeal from the Circuit Court of the United States for the Northern District of Illinois.

APPELLANTS' BRIEF.

STATEMENT OF THE CASE.

On the 15th day of February, 1902, appellee filed its bill of complaint (Trans., 2) against Samuel B. Raymond, County Treasurer of Cook County, Illinois, and ex-officio County Collector of said county, and James Baird, Town Collector of the Town of Hyde Park in said county, seeking to enjoin said officials from enforcing against appellee, a certain tax levied pursuant to an assessment made upon the

capital stock and franchises of appellee, by the State Board of Equalization of the State of Illinois on the 22nd of November, 1901, as and for the first of April, 1900.

The appellee was a corporation engaged in *the business of operating street railways,* in the City of Chicago, on the first day of April, 1900.

The statutes of the State of Illinois provide that a County Board of Assessors, consisting of three persons shall assess the tangible property of corporations doing business within the State of Illinois; and the Illinois law further provides that the capital stock and franchises of corporations pursuing the kind of business that appellee was engaged in shall be assessed by the State Board of Equalization. The members of the said State Board of Equalization in assessing the capital stock and franchises of corporations act as original assessors.

Said Board is also charged with the duty of equalizing the value of real and personal property between the several counties, after said values have been certified by the State Auditor to the county officers. All assessments made by said Board as original assessors, are certified to the county officials, and used as the basis of extending the taxes against the corporation so assessed, on the amount so certified.

Appellee was required, under the laws of the State of Illinois, to deliver to the county assessors, for the year 1900, a statement showing the market value, or if no market value then the actual value, of its shares of stock. This statement was to be forwarded to the State Board of Equalization and used by said Board in making an assessment of the

capital stock and franchises of appellee. Appellee made out a statement, which was duly forwarded to the State Board, but that statement (C. U. T. Co. Trans., 596) contained no information in reference to either the market value or the actual value of appellee's shares of stock.

The Illinois law also provided that if the corporation failed to make out a statement, it should be the duty of the County Assessors to make out a schedule getting the information called for from the best obtainable sources.

The State Board met for its annual session September 11, 1900, but took no steps towards assessing the capital stock and franchises of appellee. On November 10, 1900, the State's Attorney of Sangamon County filed a petition for a mandamus on the relation of certain tax payers, in the Circuit Court of said county, against said State Board of Equalization, alleging that said Board wilfully neglected and refused, during the year 1899, to assess the capital stock and franchises of appellee, and numerous other corporations in said petition named, and that said Board claimed and pretended that it would, at its then session, also refuse to assess the capital stock and franchises of said corporations, or would assess the same at such a figure as to produce a mere nominal tax. Said petition set forth the market value of said stock and that the same was well known to said Board, and said petition prayed that a writ of mandamus might issue, directing said Board to make an assessment of the capital stock and franchises of appellee.

On December 3, 1900, said State Board of Equalization adjourned, and on that day said Board, for

the purpose of defeating the prosecution of said mandamus suit, made a mere nominal assessment of the capital stock and franchises of appellee. Said assessment was certified to the County Clerk, and the taxes extended pursuant thereto paid before said mandamus suit was tried.

During the month of April, 1901, said mandamus suit was tried in the Circuit Court, and on the first of May, 1901, a judgment was entered by that court awarding a writ of mandamus as prayed for in said petition.

An appeal was taken from said judgment by the State Board, and on the 24th day of October, 1901, the Supreme Court of Illinois handed down an opinion affirming said judgment. *The State Board of Equalization* v. *People,* 191 Ill., 528. The Supreme Court of Illinois held that the assessment of the capital stock and franchises of appellee made by the Board on December 3, 1900, was so grossly inadequate that it was for that reason fraudulent and void.

Thereafter the mandate of the Supreme Court was duly filed in the Circuit Court, and on the 2nd day of November, 1901, there issued a writ of mandamus against the members of the State Board of Equalization, commanding them to assess the capital stock and franchises of the appellee and certain corporations therein named, and in obedience to said writ of mandamus, the said State Board of Equalization on the 22nd of November, 1901, made an assessment, amounting to the sum of $433,886, on the capital stock and franchises of appellee as and for the 1st day of April, 1900; the taxes amounting to the sum of $31,977.40 were duly extended by the County Clerk

on said assessment, and this bill of complaint is filed to enjoin the collection of said taxes, and the enforcement of said assessment.

The various allegations of appellee's bill of complaint, stripped of unnecessary verbiage, amount to this: That the Constitution and Laws of the State of Illinois require uniformity and equality in the assessment of all property within the state, and that the State Board of Equalization, in violation of those constitutional and statutory provisions, made an assessment upon the capital stock and franchises of appellee that was unequal, discriminating and unfair, and that the above result was brought about in the following manner:

First. The assessment of other property in the state, including that of railroad and telegraph companies and other corporations for the year 1900, as finally equalized by the State Board of Equalization, did not exceed one-fifth of 70 per cent of its cash value, whereas the capital stock and franchises of appellee and the other corporations that were made defendants to said mandamus suit were assessed at one-fifth of their full cash values.

Second. That the assessment of the capital stock and franchises of appellee and the other corporations above named was excessive, unreasonable and much higher than the assessments made upon the property of other persons and corporations for the same year.

Third. That the assessment of the capital stock and franchises of appellee, made by the State Board on December 3, 1900, and the payment in January, 1901, of the taxes extended pursuant to said assess-

ment, constituted a full discharge by the appellee of all taxes that could be levied under the laws of the State of Illinois, against its capital stock and franchises.

Fourth. That the members of the State Board of Equalization, in making the assessment complained of, did not exercise their own independent judgment, but believed that they were coerced by the writ of mandamus of the Circuit Court, into making the assessment, for the amount and in the manner, returned.

By reason of the foregoing proceedings, it was charged in the bill of complaint that the appellee was deprived of its property without due process of law, and denied the equal protection of the laws, in violation of the Fourteenth Amendment.

A demurrer was filed to appellee's bill of complaint, which demurrer was overruled by the court, and subsequent thereto the defendants filed their answer (Trans., 23), admitting that the assessment was made and the taxes extended pursuant thereto as alleged in appellee's bill of complaint, but denying specifically all charges of fraud, illegality, inequality and discrimination. A replication was filed to said answer and the case was thereafter heard upon proof offered by the respective parties before Master in Chancery Bishop of said court (C. U T. Co., Trans., 98).

On the 19th day of May, 1906, the City of Chicago filed an intervening petition alleging that it was the beneficial owner of the greater portion of the taxes here in controversy, and asking that it be made a party to this cause, and that it be permitted to file

an answer, and thereafter (C. U. T. Co., Trans., 1267) an order was entered granting the prayer of said petition.

A vast amount of evidence was taken before the Master in behalf of the appellee, but an examination of this record will disclose that all of that evidence, in so far as it was material to the issues in this case, may be classified under the following subdivisions:

1. The testimony of four out of twenty of the members of the State Board of Equalization, who made the assessments complained of in reference to the operation of their own minds at the time the assessments were made.

2. Certain extracts from the reports of the Railroad and Warehouse Commissioners for the State of Illinois and the reports of the Board of Agriculture of the State of Illinois.

3. Certain extracts from the records of the Union Stock Yards and Transit Company in reference to the value of horses, cattle and hogs within the State of Illinois and certain extracts from Brown's Directory of American Gas Companies, both of said publications being private compilations.

4. A statement purporting to show the number of horses, cattle and hogs in the State of Illinois, returned for taxation in the year 1900 by the local assessors, as compared with the number purported to be shown in the state by the United States Census Report of 1890; and certain statements purporting to show the aggregate assessments and the total value of the property assessed in the State of Illinois and Cook County from 1873 to 1900.

5. The records of the proceedings of the State

Board of Equalization showing the assessments made on the capital stock and franchises of the corporations above named during the years 1899, 1900 and 1901, and certain extracts from the records of the board for prior years.

6. The testimony of the officers and agents of the complainant corporations in reference to the amounts and values of their properties in the City of Chicago on the 1st day of April, 1900.

The first four items of evidence above quoted were received in evidence over the objection of appellant's counsel.

On the 25th day of April, 1902, when the application of appellee for a preliminary writ of injunction came on to be heard, the court entered an order (C. U. T. Co., Trans., 3) that the capital stock and franchises of appellee should be assessed by capitalizing the true net income of appellee for the fiscal year covering April 1, 1900, upon a basis of six per cent, and ordered said cause referred to a Master, and directed said Master to ascertain the amount of additional tax to be paid by appellee pursuant to said plan.

The Master filed a preliminary report (Trans., 29) in which said Master reported that appellee should pay $184.88 in addition to the tax previously paid, said sum to be in full of all taxes to be paid by appellee upon its capital stock and franchises for the year 1900.

On November 19, 1904, the Master filed his final report in this case (C. U. T. Co., Trans., 97), in which he found that the material allegations of complainant's bill had been proved and that no further

taxes were due from appellee under the plan of assessment promulgated by the Circuit Court.

To that report exceptions were duly filed and thereafter said cause came on to be heard before the court, and on the 25th of June, 1906, the Circuit Court handed down an opinion (C. U. T. Co., Trans., 1277), in which he held that the material allegations of appellee's bill of complaint had been proved; that the payment theretofore made of $184.88 was all the taxes that appellee should pay and that all of the appellants be perpetually enjoined from collecting or attempting to collect the balance of said taxes, amounting to the sum of $27,609.02.

From that decree an appeal was prayed by the appellants to this court.

Appellants' various assignment of errors have been classified in the specifications of errors under four sub-divisions:

I. The Circuit Court erred in refusing to dismiss this cause for want of jurisdiction.

II. The Circuit Court erred in admitting incompetent evidence in behalf of appellee and in refusing to hold that there was no competent evidence tending to prove the allegations of appellee's bill of complaint.

III. The Circuit Court erred in not holding that appellee has not made out a case entitling it to relief in a court of equity.

IV. The Circuit Court erred in enjoining the collection of the taxes in question without requiring appellee to pay $27,609.02 in addition to the amount already paid.

The various assignments of error will be considered in our argument under the same subdivisions.

SPECIFICATION OF ERRORS.

I.

The Circuit Court erred in refusing to dismiss this cause for want of jurisdiction.

First. The said Circuit Court erred in failing and refusing to dismiss this cause for want of jurisdiction in a Federal Court, appearing upon the face of complainant's bill of complaint.

Second. The said Circuit Court erred in failing to dismiss complainant's bill of complaint for want of jurisdiction, because the undisputed evidence in this record shows that a Circuit Court of the United States is without jurisdiction to hear and determine the matters and things charged in complainant's bill.

Third. The said Circuit Court erred in refusing to hold that the allegations of the complainant's bill of complaint show that complainant has not been denied by the State of Illinois or its officers, any right, privilege or immunity guaranteed to the complainant by the Fourteenth Amendment to the Constitution of the United States.

Fourth. The said Circuit Court erred in refusing to hold that the allegations of such complainant's

bill of complaint show that the complainant has not been deprived of its property without due process of law, in violation of the Constitution of the United States.

Fifth. The said Circuit Court erred in refusing to hold that the State of Illinois had not denied to the complainant the equal protection of its laws within its jurisdiction.

Sixth. The said Circuit Court erred in refusing to find that the sole grievance complained of in complainant's bill of complaint is that the officers of the State of Illinois charged with the duty of making a fair and equal assessment of the complainant's capital stock, have made an assessment that is unfair and unequal, contrary to and in violation of the Constitution and the Laws of the State of Illinois; and said Circuit Court likewise erred in assuming and retaining jurisdiction of this cause, when, upon the face of complainant's bill of complaint, it appears that the said Circuit Court was without jurisdiction.

Seventh. The said Circuit Court erred in refusing to hold that inasmuch as the complainant and defendants were all citizens of and residents of the State of Illinois, a Federal Court had no jurisdiction in this cause to hear and determine the fairness, equality or regularity of the assessment made against the complainant, and the said Circuit Court erred in refusing to dismiss this cause for want of jurisdiction.

II.

The Circuit Court erred in admitting incompetent evidence in behalf of appellees, and in refusing to hold that there was no competent evidence tending to prove the allegations of appellee's bill of complaint.

Ninth. The said Circuit Court erred in overruling the objections and exceptions and each and every of said objections and each and every of said exceptions to the said Master's reports and to each of them.

Tenth. The said Circuit Court erred in approving and confirming the Master's reports and each of them, filed in this cause.

Eleventh. The said Circuit Court erred in failing and refusing to sustain the objections and each and every of the same filed by the defendants to said Master's reports and to each of said reports.

Twelfth. The said Circuit Court erred in finding that all of the material allegations of the bill of complaint are sustained by the evidence and likewise in finding that the equities of the case are with the complainant.

Thirteenth. The said Circuit Court erred in failing to find that the material allegations of the bill of complaint in this cause have not been proved by any competent evidence.

Fourteenth. The said Circuit Court erred in finding that the assessment made by the State Board of Equalization of the State of Illinois at its session in 1901 against the complainant, upon its capital stock for the year 1900, amounting to $433,886, was

made under the coercive influence of a writ of mandamus, issued by the Circuit Court of Sangamon County, in the State of Illinois, and did not represent the real or independent judgment of the said State Board of Equalization.

Fifteenth. The said Circuit Court erred in failing and refusing to find that the assessment, amounting to $433,886, made by the State Board of Equalization of the State of Illinois at its session in 1901 against the complainant, upon its capital stock for the year 1900, was made by the said State Board of Equalization in the exercise of its own judgment and upon its official responsibility.

Sixteenth. The said Circuit Court erred in finding that the assessments made by the State Board of Equalization at its meeting, held in 1901, upon the capital stock of said complainant and upon the capital stock of the other corporations for the year 1900, named in the writ of mandamus, issuing from the Circuit Court of Sangamon County, Illinois, were in fact made upon a materially different basis from that upon which the capital stock of all other corporations of the same class were assessed by the State Board of Equalization for the year 1900, and also upon a basis materially different from that upon which other taxable property in the State of Illinois was assessed for the year 1900.

Seventeenth. The said Circuit Court erred in refusing and failing to find that the only competent evidence contained in record in this cause showed that the assessment made by the State Board of Equalization at its meeting held in 1901 upon the capital stock of said complainant, and upon the

capital stock of the other corporations for the year 1900, named in the writ of mandamus issuing from the Circuit Court of Sangamon County, Illinois, were in fact made upon the same or a similar basis, as that upon which the capital stock of all other corporations of the same class were assessed by the State Board of Equalization for the year 1900, and also that said assessments as to each of said corporations were made upon the same or a similar basis upon which all other taxable property in the State of Illinois was assessed for the year 1900.

Eighteenth. The said Circuit Court erred in finding that said assessment made in 1901 on the capital stock of complainant was made under the coercive influence of a writ of mandamus, issuing from the Circuit Court of Sangamon County, Illinois, without the exercise or application of the judgment of the State Board of Equalization or the members thereof, to the ascertainment of the value of said capital stock, and without the State Board of Equalization, either in fact or in form, taking into consideration, the basis upon which all other taxable property in the State of Illinois was assessed and taxed for the year 1900 and without in fact or in form equalizing the valuation or assessment of the capital stock of said complainant for the year 1900 with all or any of the assessments made upon the other taxable property in the State of Illinois for the year 1900, with the result that the said assessment made on the capital stock of the complainant, in the year 1901 for the year 1900, was made on a much higher basis than that upon which the other taxable property of the State of Illinois was assessed and taxed for the year 1900.

Nineteenth. The said Circuit Court erred in refusing and failing to find that the assessment made in the year 1901 on the capital stock of the complainant, was made without any coercion and in the exercise of the independent judgment of the State Board of Equalization and the members thereof, for the purpose of ascertaining the fair value of the capital stock of said complainant, and that said assessment was obtained and resulted from the said State Board of Equalization equalizing the value and assessment of the capital stock of said complainant for the year 1900 with all of the assessments made upon other taxable property in the State of Illinois, and that the assessment so arrived at was just and fair to the said complainant.

Twentieth. The said Circuit Court erred in finding that said assessment made in the year 1901 for the year 1900 on the capital stock of the complainant, by the State Board of Equalization, was made without notice thereof to the complainant or opportunity to the complainant to appear and be heard in respect thereto; that said court should have held that complainant did have notice of said proceedings and did have an opportunity to hear and be heard before said State Board of Equalization.

Twenty-first. The said Circuit Court erred in finding that in the making of said assessment of the capital stock of the complainant in the year 1901 for the year 1900, said State Board of Equalization did not take into consideration the fact that the capital stock tax upon the complainant's capital stock for the year 1900 had theretofore been assessed by the State Board of Equalization and had theretofore been paid *by* the State Board of Equalization.

Twenty-second. The said Circuit Court erred in finding that the making of the assessment for the year 1900 upon the capital stock of the said complainant, and the extension of the taxes thereon, and the attempt to enforce the payment of the taxes so extended, from complainant, was and is a violation of the Fourteenth Amendment to the Constitution of the United States.

Forty-fourth. The said Circuit Court erred in admitting and receiving in evidence, over the objection and exception of defendants' counsel, oral testimony for the purpose of explaining, varying and contradicting the official acts, records and proceedings of the State Board of Equalization for the years 1900 and 1901, wherein and whereby said Board made the assessment against the property of the complainant sought to be enjoined in this cause.

Forty-fifth. The said Circuit Court erred in refusing and failing to hold that parol evidence was incompetent, for the purpose of explaining, varying or contradicting the official acts, records and proceedings of the State Board of Equalization of the State of Illinois, in reference to the assessments on the capital stock of the complainant, made by the said board in the year 1901, for the year 1900.

Twenty-fifth. The said Circuit Court erred in admitting and receiving in evidence over the objection and exception of defendant's counsel, the following testimony of Samuel M. Barnes, a member of the State Board of Equalization, of the State of Illinois, for the years 1900 and 1901:

I heard the members of the State Board of Equalization discuss the remarks of the court on the ap-

plication for an extension of time to make return to the writ of mandamus. My recollection of one remark that I heard was that it was a mere question of the Board's getting their pencils and getting to work and they ought to do it. I heard one of the Board say that the court was very vituperative in this matter. I think it was either Mr. Schaefer or Mr. Hopkins of the Committee on the Board who was over there listening to the court. The impression I got was very strongly fixed in my mind and it was that his attitude was intensely hostile to the Board and I was told by those who heard him that it was in the shape of a roast from start to finish as far as his manner was concerned. Of course, I cannot just quote the language he used, but rather his manner I was told was vituperative, absolutely so. I was told this by members of the State Board of Equalization who were present and heard the remarks of the judge. The reassessment as we determined it, was made with a view to satisfying the court the order of the court. We made no deduction, if I remember rightly, on account of that all of these Companies but two had in 1900 been assessed upon their capital stock. We did not take into consideration the fact, if it was a fact that other property in the state had not been assessed at the maximum more than 70 per cent of its value. The court, in his discussion, gave an illustration of the manner in which the assessment should be made and I think he made an example of the Gas Company here; in any event one of the companies he made an example of that and in that example he said just how the assessment should be made and as this was an order of the court, we followed that

example that he gave in a general way, for all these assessments. Mr. Smith and Mr. Greenacre furnished these tables (referring to complainant's Exhibit A, 10/23/03) said document being a compilation of the value of the capital stock of said companies, prepared by Miss Goggin and Miss Haley, as members of the Teachers' Federation. Our desire in making this reassessment was in order to satisfy the Circuit Court of Sangamon County, because it was not my judgment that it was a proper assessment. The general idea seemed to be with the committee on capital stock that the action of the committee was dictated by the court. It was discussed between the committee on capital stock at about the time the reassessment was reported to the Board and the first object to be attained was to satisfy the court. The assessments that were made subsequent to this assessment of 1900 were based on what we believed to be the law and in a general way on the judgment of the members, that is on the real value. The assessment for 1901 we regarded as representing our real judgment and the other we did to satisfy the court. The restraining order issued by the court was dissolved on the 22nd of November, and I think it was a very short time after that on that day that we made our return to the writ.

Twenty-sixth. Said court also erred in admitting in evidence, over the objection of defendants' counsel, the testimony of Frank P. Martin, a member of the State Board of Equalization, which was in substance the same as the testimony of said Barnes.

Twenty-seventh. The said Circuit Court erred in receiving in evidence, over the objection of defendants' counsel, the testimony of John S. Cruttenden, a member of the State Board, which was in substance the same as the testimony of said Barnes.

Twenty-eighth. Said court erred in receiving in evidence, over the objection of defendants' counsel, the testimony of Louis D. Hirsheimer, a member of the State Board of Equalization, which was in substance the same as the testimony of said Barnes.

Twenty-ninth. The said court erred in receiving in evidence, over the objection of the defendant, the report of the Railroad and Warehouse Commissioner of the State of Illinois for the year 1900, and the report of the Commissioner of Agriculture of the State of Illinois for the same year, and Brown's Directory of American Gas Companies.

Thirty-second. The said Circuit Court erred in admitting in evidence, over the exception of defendant, the statement, being Ward Exhibit C, purporting to show live stock returned for taxation in 1900 by local assessors as compared with live stock according to the U. S. Census returns.

III.

The Circuit Court erred in refusing to hold that appellee has not made out a case entitling it to relief in a court of equity.

Twenty-fourth. The said Circuit Court erred in ordering, adjudging and decreeing that the assessment of $433,886 on the capital stock of the com-

plainant made by the State Board of Equalization in the year 1901 for the year 1900, and all taxes levied and extended thereon and now held upon the books of the tax collecting agencies of the City of Chicago, County of Cook and State of Illinois, for collection, are, and each of them is, illegal, null and void, and that the defendants, Samuel B. Raymond, County Treasurer of Cook County, Illinois, and *ex-officio* County Collector of Cook County, Illinois, and *ex-officio* Town Collector of the Town of Hyde Park in said county, and John J. Hanberg, his successor as County Treasurer of Cook County, Illinois, and *ex-officio* County Collector of said county, and *ex-officio* Town Collector of the Town of Hyde Park, in said county, and his successor and successors in office as such County Treasurer and *ex-officio* County Collector and *ex-officio* Town Collector of said Town of Hyde Park, and the defendant, the City of Chicago, and each of them and each and every of their respective agents, deputies, servants, attorneys and representatives, be and are perpetually enjoined and restrained from in anywise levying or collecting or in any manner attempting, directly or indirectly, to levy or collect or to enforce against the complainant or against any of its property, the said tax or taxes or any or either of them, or any part thereof.

IV.

The Circuit Court erred in enjoining the collection of the tax in question.

Twenty-third. The said Circuit Court erred in entering the order on the 28th day of June, 1902,

to the effect that the complainant should pay, in addition to the tax already paid, upon the first or original capital stock assessment for the year 1900, the further sum of $184.88, making a total capital stock tax to be paid by the complainant for the year 1900 of $6,592.93, which was found and decreed by the court to be all that complainant should equitably be required to pay as a capital stock tax for the year 1900, for said Circuit Court should have found, if it had jurisdiction of this cause and of the parties hereto, that the complainant should be required to pay the aggregate amount of all taxes assessed against it in the year 1901 as and for the year 1900 upon its capital stock, aggregating $433,883.

Twenty-fourth. The said Circuit Court erred in ordering, adjudging and decreeing that the assessment of $433,886 on the capital stock of the complainant, made by the State Board of Equalization in the year 1901 for the year 1900, and all taxes levied and extended thereon and now held upon the books of the tax collecting agencies of the City of Chicago, County of Cook and State of Illinois for collection, are, and each of them is, illegal, null and void, and that the defendants Samuel B. Raymond, County Treasurer of Cook County, Illinois, and *ex-officio* County Collector of Cook County, Illinois, and *ex-officio* Town Collector of the Town of Hyde Park, in said county, and John J. Hanberg, his successor as County Treasurer of Cook County, Illinois, and *ex-officio* County Collector of said County and *ex-officio* Town Collector of the Town of Hyde Park in said County and his successor and successors in office as such County Treasurer and *ex-officio* County Collector and *ex-officio* Town Collector of

said Town of Hyde Park, and the defendant, the City of Chicago, and each of them and each and every of their respective agents, deputies, servants, attorneys and representatives, be and are perpetually enjoined and restrained from in anywise levying or collecting or in any manner attempting, directly or indirectly, to levy or collect or to enforce against the complainant or against any of its property, the said tax or taxes, or any or either of them, or any part thereof.

BRIEF OF ARGUMENT.

I.

THE CIRCUIT COURT ERRED IN REFUSING TO DISMISS THIS CAUSE FOR WANT OF JURISDICTION.

(a) Equality and uniformity of taxation is not a right guaranteed by the Federal Constitution.

(b) Where the ministerial officers of a state, contrary to the constitution and laws of that state, deprive a person of his property, without due process of law, no federal question is presented, for their acts will not be imputed to the state, but in such a case it will be presumed that the courts of the state will give full relief.

(c) The session of the State Board was public, and appellee had an opportunity to be present and be heard. This constituted due process of law.

II.

THE CIRCUIT COURT ERRED IN ADMITTING INCOMPETENT EVIDENCE IN BEHALF OF APPELLEE AND IN REFUSING TO HOLD THAT THERE WAS NO COMPETENT EVIDENCE TENDING TO PROVE THE ALLEGATIONS OF APPELLEE'S BILL OF COMPLAINT.

(a) The testimony of the individual members of the State Board in reference to the operation of their minds at the time they made the assessment complained of was incompetent.

(b) The extracts from the report of the Railroad and Warehouse Commissioners and the Board of Agriculture were incompetent.

(c) The figures taken from the books of the Union Stock Yards and Transit Company and Brown's Directory of American Gas Companies were incompetent.

(d) The alleged discrepancy between the Census Report and the Assessors' returns with reference to the amount of live stock within the State of Illinois, during the year 1900, did not prove any issue in this case.

(e) The records of the State Board did not sustain the allegations of appellee's bill.

(f) The testimony of the officers of appellee in reference to the value of its property on April 1, 1900, did not make out a case.

III.

THE CIRCUIT COURT ERRED IN REFUSING TO HOLD THAT APPELLEE HAD NOT MADE OUT A CASE ENTITLING IT TO RELIEF IN A COURT OF EQUITY.

(a) If the re-assessment complained of was void

and illegal because the Board had exhausted its power in making the first assessment, then appellee had adequate remedy at law, for it could have paid the void assessment and then have recovered the money back.

(b) Overvaluation of property by an assessing body, unaccompanied with fraud or bad faith, furnishes no ground for equitable intervention.

(c) Appellee was guilty of *laches* and iniquity, and has not offered to do equity.

IV.

THE CIRCUIT COURT ERRED IN ENJOINING THE COLLECTION OF THE TAX IN QUESTION WITHOUT REQUIRING APPELLEE TO PAY $18,015.80, BEING THE AMOUNT NOW DUE IN ADDITION TO THE TAX ALREADY PAID.

(a) The Circuit Court erred in assessing appellee upon its alleged net income instead of upon the fair market value of its capital stock.

(b) There was no competent evidence tending to show the net income of appellee.

ARGUMENT.

I.

THE CIRCUIT COURT SHOULD HAVE DISMISSED THIS CAUSE FOR WANT OF JURISDICTION.

The Constitution of the State of Illinois (Sec. 1, Art. 9) guarantees to persons and corporations within the states equality and uniformity of taxation. The statutes of the State of Illinois enacted pursuant thereto provide (Sec. 108, Hurd's Revised Statutes, 1899, p. 1412) that the State Board of Equalization shall assess the capital stock and franchises of corporations at its fair cash value.

It will be observed that the foregoing statutory and constitutional provisions imposed upon the State Board of Equalization the duty of assessing the capital stock and franchises of corporations at its fair cash value in precisely the same way that all other property throughout the state is assessed.

The Supreme Court of Illinois has repeatedly held that it is the duty of the assessing officers of the State of Illinois, to carry out the constitutional and statutory provisions, in reference to uniformity and equality of taxation.

The Circuit Judge in his opinion (Trans., C. U. T. Co., 1297) held that the failure of the State Board of Equalization to carry out the constitutional and statutory provision above quoted, guaranteeing equality and uniformity of taxation, constituted a violation of the 14th Amendment, and gave a Circuit Court of the United States jurisdiction of this cause regardless of the citizenship of the parties.

An examination of the decisions of this court will

plainly demonstrate that the Circuit Judge was in error in his fundamental assertion in this case, that any substantial departure from the laws of the State of Illinois, on the part of the officers of the State of Illinois, in levying and collecting taxes, constituted the taking of property, without due process of law, in violation of the Federal Constitution.

A.

The law is well settled by the decisions of this court that equality and uniformity of taxation is not a right guaranteed by the Federal Constitution.

The following are a few of many decisions of this court laying down the above rule:

State Railway Tax Cases, 92 U. S., 575, 618.

Davidson v. *Board of Admrs. of New Orleans,* 96 U. S., 97.

Kelly v. *City of Pittsburgh,* 104 U. S., 78,

Merchants & Manufacturers Nat. Bank v. *Pennsylvania,* 167 U. S., 461-4.

Henderson Bridge Co. v. *City of Henderson,* 173 U. S., 592.

Magoun v. *Ill. Trust & Sav. Bank,* 170 U. S., 283, 293, 295.

Connolly v. *Union Sewer Pipe Co.,* 184 U. S., 540, 562.

State of Missouri ex rel. Hill v. *Dockery,* 191 U. S., 165, 170.

Travelers Ins. Co. v. *Connecticut,* 185 U. S., 364, 371.

See also Brief in *C. U. T. Co.* case, p. 39.

Should we, however, concede that equality and uniformity of taxation is guaranteed under the 14th Amendment, appellee's bill of complaint does not

make out a case giving the Circuit Court jurisdiction, for the alleged wrongful acts of the State Board of Equalization were not the acts of the state within the meaning of the 14th Amendment.

B.

Where the constitution and the laws of a state are just and fair and the sole grievance of which a party complains is that the officers of the state, charged with executing those laws, have deprived that party of his property, contrary to the constitution and the laws of the state, and in violation of the terms thereof, no federal question is presented, for, under the above circumstances, it will be presumed that the state courts will give full relief against the illegal and unauthorized acts of the officers of the state.

The above proposition is sustained by the following authorities:

Strauder v. *West Virginia*, 100 U. S., 303.
Virginia v. *Rives*, 100 U. S., 313.
Civil Rights Cases, 109 U. S., 3.
Kentucky v. *Powers*, 201 U. S., 1.
Barney v. *City of New York*, 193 U. S., 430.
Manhattan Railway Company v. *City of New York*, 18 Fed., 195.
Coulter v. *Louisville & N. R. Co.*, 196 U. S., 599.

See also Brief in *C. U. T. Co.* case, p. 46.

C.

Equally untenable is the claim in appellee's bill of complaint that under the circumstances there described the appellee was deprived of its property

without due process of law, because it had no opportunity to be heard at the time the assessment complained of was levied against it.

The time and place of the sessions of the State Board of Equalization were fixed by law, those sessions were public, and the appellee had an opportunity to be present and be heard. Such a proceeding constitutes due process of law.

Michigan S. R. R. Co. v. *Towers,* 201 U. S., 245, 301.

Public Clearing House Co. v. *Coyne,* 194 U. S., 497.

II.

THERE IS NO COMPETENT EVIDENCE IN THIS RECORD TENDING TO SUSTAIN THE MATERIAL ALLEGATIONS OF APPELLEE'S BILL OF COMPLAINT WITH REFERENCE TO THE ASSESSMENT COMPLAINED OF.

We will take up each of the items of evidence offered by appellee before the Master and show that evidence was incompetent and should be disregarded by this court.

A.

The testimony of the individual members of the State Board of Equalization in reference to the operation of their minds at the time they made the assessment complained of was incompetent and should have been excluded by the Circuit Court.

Four out of the twenty members of the State Board of Equalization, that made the assessment complained of, were called to the witness stand before the Master by the appellee and they testified in substance that they did not equalize the assessment

of appellee's property with the assessments made upon other property throughout the state for the same year, and that they put down what they believed the State Circuit Court wanted them to put down.

By this means they were permitted to contradict their official acts, as evidenced by the record of the State Board. This evidence was incompetent and should have been excluded.

Wright v. *City of Chicago*, 48 Ill., 285.
Quick v. *Village of River Forest*, 130 Ill., 323.
Ryder Estate v. *City of Alton*, 175 Ill., 94.
Republic Life Ins. Co. v. *Pollack*, 75 Ill., 292.
Fayerweather v. *Ritch*, 195 U. S., 276.
Coulter v. *Louisville & N. R. Co.*, 196 U. S., 599.
Brief, *C. U. T. Co.*, p. 79.

B.

The extracts from the report of the Railroad and Warehouse Commissioners and the Board of Agriculture of the State of Illinois were incompetent.

In order to make a public record competent evidence of the facts therein recited, two things are necessary: First, that the fact therein recited is required by law to be reported by the official; second, that the person recording the fact must have had personal knowledge of the matters he was registering at the time.

The above reports do not conform to either of said requirements, and were therefore incompetent.

Hegler v. *Faulkner*, 153 U. S., 109.
Chaffee v. *U. S.*, 18 Wall., 516.

Swift v. *State of New York*, 89 N. Y., 52.
Brief, *C. U. T. Co.*, p. 92.

C.

The figures taken from the books of the Union Stock Yards and Transit Company and from Brown's Directory of American Gas Companies were not competent evidence and should have been excluded.

The above publications were private compilations, and the witness who produced said figures admitted that he had no knowledge as to whether the figures were correct. Under the above circumstances the publications should have been excluded.

State v. *Daniels*, 44 New Hampshire, 383.
Richardson Bros. & Co. v. *Stringfellow*, 100 Ala., 416-418.
Langley v. *Smith*, 3 New York St. Rep., 276.
See also authorities cited in *C. U. T. Co.* Brief, p. 102.

D.

The alleged discrepancy between the United States Census Report and the Assessors' return with reference to the amount of live stock within the State of Illinois during the year 1900 does not tend to prove any fact in this case.

Live stock could be assessed at a different rate and in a different manner than the property of street railroads, gas, telephone and electric light companies, without infringing on the right guaranteed by the Federal Constitution.

E.

The records of the State Board of Equalization do not sustain any of the allegations of appellee's bill.

Appellee offered in evidence certain resolutions contained in the minutes of proceedings of the State Board of Equalization for certain years prior to 1893, to the effect that in the opinion of the board the real and personal property of the state during the years in question had been assessed at less than its full cash value.

Prior to 1898 assessors were required to value property at its fair cash value. By the terms of the Act of July 1st, 1898, assessors were required to set down in one column the full value of real and personal property and in another column one-fifth of said full value, which latter sum should be the assessed value. This statute was enacted for the very purpose of doing away with the practice of undervaluing property which it is claimed had existed prior thereto. Evidence of undervaluations prior to the Act of 1898 does not tend to prove the existence of undervaluations thereafter.

Coulter v. *Louisville & N. R. Co.*, 196 U. S., 599.

III.

APPELLEE HAS NOT MADE OUT A CASE ENTITLING IT TO RELIEF IN A COURT OF EQUITY.

A.

If the contention of appellee be well taken, namely, that the re-assessment of 1900 was void and illegal because the Board had exhausted its powers

in making the first assessment, then appellee had an adequate remedy at law, for it could have paid the void assessment and then have recovered the money back.

Shelton v. *Platt*, 139 U. S., 591.

Allen v. *Pullman Pal. Car. Co.*, 139 U. S., 658.

Pacific Express Co. v. *Seibert*, 142 U. S., 339.

B.

Overvaluation of property by an assessing body unaccompanied with fraud or bad faith furnishes no ground for equitable intervention.

There are many general allegations in appellee's bill, but when those allegations are reduced to their lowest terms, the whole bill (aside from the claim that the second assessment was void) is that the property of the appellee was assessed at a higher proportionate amount than was the property of other persons and corporations throughout the State of Illinois for the same year. The above allegations are insufficient to justify relief in a court of equity.

Pittsburg C. T. & S. L. L. R. Co. v. *Backus*, 154 U. S., 421, 434.

Maish v. *Territory of Arizona*, 164 U S., 599, 611.

C.

Before a court of equity will grant an injunction to restrain the collection of a tax on the ground of excessive valuation and unfair discriminations on the part of the assessors, complainant must distinguish by his bill the legal from the illegal part of

the tax, and must actually pay the tax which is due; otherwise he is not entitled to relief.

Albuquerque Nat. Bk. v. *Perrea*, 147 U. S., 87.

State Railway Tax Cases, 92 U. S., 575-616.

National Bank v. *Kimball*, 103 U. S., 733.

IV.

THE UNDISPUTED EVIDENCE SHOWS APPELLEE OUGHT TO PAY $27,609.02 MORE THAN IT WAS REQUIRED TO PAY BY THE ORDER OF THE CIRCUIT COURT.

Even if we assume that the Circuit Court had jurisdiction of this cause, that the appellee has established the allegations of its bill by competent evidence, that the re-assessment for the year 1900 was illegal and void, and that the Circuit Court had the power to make a re-assessment, then appellee was only entitled to the following relief:

First, to receive credit for the $4,183.50 paid on the original assessment; second, to have its capital stock and franchises assessed at 1/5 of 70 per cent of its actual cash value instead of at 1/5 of 100 per cent, which latter sum it is claimed the State Board of Equalization used as the basis for its assessment.

The rules of the State Board of Equalization under which all other corporations were assessed for the year 1900, required that the market value or fair cash value of the corporation's shares of stock should be added to its debt (excluding indebtedness for current expenses) and that the aggregate should be the fair cash value of the capital stock and franchises of such corporation.

The above method of assessment was the one di-

rected to be made by the writ of mandamus of the Circuit Court, and has been held to be the proper method of assessing capital stock and franchises of Illinois corporations under the very statute now in question.

State Board of Equalization v. *People*, 191 Ill., 528.

State Railroad Tax Cases, 92 U. S., 575-616.

The Circuit Court ignored the fair cash value of the stock of appellee, and capitalized the alleged net income at six per cent (taking such net income from certain lump sums shown by the company's books) and by these means placed so insignificant a valuation upon the capital stock and franchises of appellee that it was permitted to escape the payment of the greater share of its tax for the year 1900.

The Circuit Court, in arriving at the amount of the additional tax to be paid by appellee for the year 1900, followed the computation made by the Master; the Master in turn adopted the figures and method of computation furnished to him by the company's experts.

We have presented three tables below numbered respectively (1), (2), and (3). Table (1) showing the computation made by the Master, which was approved by the Circuit Court; table (2) showing the amount of taxes due under the rules of the State Board of Equalization, which were approved by this court in the State Railroad Tax Cases, *supra*, and, table (3) showing the tax still remaining due and unpaid on appellee's own theory, that 1/5th of 70 per cent of the full value of the capital stock and

franchises of the appellee should be used instead of the full value, which it is claimed the State Board took.

(1)

Earnings before deducting taxes	$ 38,523.30
Full tax	184.88
Net income	38,338.42
Capitalized at 6%	638,973.66
Equalized at 70%	447,281.57
1/5 for assessed value	89,456.31
Extending tax at .0737	$ 6,592.93
Deducting tax already paid	6,408.05
Leaving to be paid under the decision of the United States Circuit Court	$ 184.88

Making an assessment of the capital stock of said corporations in accordance with the rules approved by this court in the *State Railroad Tax Cases, supra,* we would get the following result:

(2)

Capital stock valued, equalized, as required by law	$2,169,430.00
1/5 the valuation upon which taxes are to be extended	433,886.00
Extending tax at .0737	31,977.40
Deduct tax paid on original assessment.	4,183.50
Leaves	$ 27,793.90
Deduct tax assessed by U. S. Cir. Ct..	184.88
Tax yet due	$ 27,609.02

The above assessment is made by taking one-fifth of the full value of the capital stock and franchises of the above corporations.

Should we assume that complainant's contention be sound, that one-fifth of 70 per cent of the full value of the capital stock and franchises of the appellee should be taken, then we get the following results:

(3)

Full value of capital stock including franchise (C. U. T. Co. Trans., 242).	$ 2,846,040.00
70% of that amount	1,992,228.00
1/5 of that amount for assessed value.	398,445.60
Less assessed value of tangible property	135,322.00
Leaves	$ 263,123.60
Extend tax at 7.37	19,392.21
Deduct tax paid on original assessment	4,183.50
Leaves	15,208.71
Deduct tax paid by order of U. S. Cir. Court	184.88
Leaves	$ 15,023.83

tax remaining unpaid on complainant's own theory of equalizing the full value of the capital stock by taking one-fifth of 70 per cent of the same.

It appears from the foregoing figures that if the Circuit Court had followed the method of assessment approved by this court in the *Railroad Tax Cases, supra,* then even after equalizing the value by taking one-fifth of 70 per cent, the appellee would

have been required to pay $15,023.83 more than it was ordered to pay by the Circuit Court.

There are many other inaccuracies in the method of computation which have been fully pointed out in the brief filed in the *Chicago Union Traction Company* case, to which reference is here made for a full discussion of the question. (Brief, *Chicago Union Traction Company,* p. 127.)

C.

The decree of the Circuit Court was also inequitable and unfair in that it permitted the appellee to pay the additional taxes of $184.88 on July 1, 1902, without paying any interest on the same.

Taxes levied for the 1st of April, 1900, became delinquent under the laws of the State of Illinois on the 1st of May, 1901, and taxes thereafter remaining unpaid drew interest at the rate of 1 per cent a month. Appellee, by failing to furnish any statement to the State Board of Equalization of the value of its capital stock and franchises, and by assisting said Board in attempting to maintain the first assessment which was expressly held by the State Supreme Court to be fraudulent and void, is legally responsible for the delay in the making of the second assessment. Now, that the appellee has invoked the aid of a court of equity, it should be required to do equity. Equity requires that appellee pay its just burden of taxes and interest at the rate of 5 per cent on that amount from the time it should have been paid to the collecting officers. Appellee had the use of that money from the 1st of May, 1901, up

till July 1, 1902, and no reason has been or can be suggested why it should not reimburse the state in that regard.

JAMES HAMILTON LEWIS,
Corporation Counsel of the City of Chicago;

DAVID K. TONE,
Special Counsel for said City;

HARRY A. LEWIS,
County Attorney of Cook County;

WILLIAM F. STRUCKMANN,
Assistant County Attorney of said County;

WILLIAM H. STEAD,
Attorney General of the State of Illinois;

GEORGE B. GILLESPIE,
Special Assistant Attorney General of said State;
Solicitors for Appellants.

IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1906.

NO. 427.

SAMUEL B. RAYMOND, County Treasurer of Cook County, Illinois, and ex-officio County Collector of Cook County, Illinois; JOHN J. HANBERG, his successor, as such County Treasurer and County Collector et al., *Appellants.*

vs.

SOUTH CHICAGO CITY RAILWAY COMPANY, *Appellee.*

Appeal from the Circuit Court of the United States for the Northern District of Illinois.

BRIEF FOR APPELLEE.

STATEMENT OF THE CASE.

MAY IT PLEASE THE COURT:

This is a suit brought to restrain the collection of the tax upon the re-assessment of the capital stock of the South Chicago City Railway Company, made by the Illinois State Board of Equalization in the year 1901 for the year 1900. By such re-assessment they determined the full value of the property to be assessed at the sum of $2,169,430. The tax sought to be restrained amounts to $33,569.40.

The court below, after full hearing upon proofs, sustained the bill and entered its final decree restraining the collection of the tax. The bill (filed February 15, 1902) showed, among other things, the following:

SUMMARY OF THE BILL.

1. That complainant, appellee, was a company possessed of a street railroad in the Town of Hyde Park, Chicago, Illinois, beginning on the north at the corner of Sixty-third street and Madison avenue and running southeasterly to the southern limits of the town, city and county; that its capital stock at par amounted to $1,603,800; that its property was subject to one mortgage for $50,000 and another mortgage for $1,513,000. (Tr., p. 1.)

2. That Cook County on February 25, 1896, had 125,000 inhabitants and more, and was therefore within the provisions of the Assessment Act of February 25, 1896, providing for boards of review (4 Starr & Curtis's Ill. St., Chap. 120, Par. 104), and that the defendants were the tax collecting officers of the state.

3. That appellee's property had already been listed and assessed in April, 1900, by the Cook County Board of Assessors. That afterwards the Board of Review of Cook County did review and correct said assessment in the manner required by the Assessment Act of Illinois of February 25, 1898. (4 Starr & Curtis's Ill. St., Chap. 120, Par. 109 *et seq.*)

4. The State Board of Equalization of Illinois was duly elected at the election of November, 1896,

for a term of four years and duly assembled and organized in August, 1897 (Tr., p. 3); that December 3, 1900, the capital stock of the company was duly assessed by the said board of equalization.

That the county clerks of the several counties of Illinois did, on September 10, 1900, duly transmit to the auditor of public accounts abstracts of the assessments on property in their respective counties, etc. (Tr., p. 4.) The bill then avers that the regular method of equalizing and correcting the several assessments was duly pursued and that on December 3, 1900, the assessment upon the capital stock of appellee was duly made so as to ascertain and determine the fair cash value of its capital stock and franchise over and above the value of its tangible property according to law, and such surplus value was duly fixed by the said board at $250,000, and the assessed value thereof was also duly fixed by said board at one-fifth of said sum according to law, viz., $50,000. That the same was duly certified to the Auditor and by him reported to the county clerk for said year 1900, and that the old Board on December 3, 1900, adjourned without day, and taxes were duly assessed thereon (Tr., p. 5) and that the collector's books were thereupon made out and warrants prepared and delivered to the collector of the Town of Hyde Park. (Tr., p. 6.)

5. That the town collector demanded payment of the taxes so assessed, levied and extended. That appellee, in obedience to the demand, paid them and was by the collector given the receipt provided by law therefor. That the township collector paid over

the taxes so collected to the defendant, Samuel B. Raymond, county collector, so far as payable, to the state treasurer and to the county, and that the township collector did pay, to the other state authorities, the respective taxes so collected. (Tr., p. 7.)

6. By paragraph 6 the bill avers in detail the election of the new board of equalization at the November election of 1900, consisting of different individuals from those constituting the board elected in 1896, and whose term of office was still in existence in December, 1900. That about the 10th day of September, 1901, the new board, which had been elected in November, 1900, assembled and organized, the same being long after the taxes for the year 1900, levied upon the appellee's property aforesaid, had been paid. That this new board, notwithstanding the facts previously narrated, on November 22, 1901, assumed again, without any notice, to assess the capital stock of appellee for the year 1900, and made a pretended second assessment of said capital stock, and found the same to be $2,169,430, and one-fifth thereof, as the assessed value, to be $433,886 (Tr., p. 9); and did certify and report and extend upon the same against appellee's stock, new taxes for said 1900, in addition to the taxes which had already been paid, and did issue warrants commanding the township collector to collect the sum of $33,569.40 as such pretended tax for 1900 upon the capital stock of appellee, and delivered the same to the said township collector of Hyde Park for the purpose of collecting the same as the taxes for 1900. (Tr., p. 10.) That the defendant township collector demanded payment of the same and threatened to levy upon,

distrain and sell the personal property of appellee, but appellee-refused to pay the same, as it lawfully might and should, but unless said township collector is restrained by the court he will carry out his threats.

That appellee is a common carrier of passengers for hire upon its street railroad and in duty bound to continue its operations, and is liable to be compelled so to do by mandamus if it should omit the same, and is subject to forfeiture and loss of franchise if it should permit the same to be interrupted (Tr., p. 10); and in and about the performance of its public duty it needs and requires all of its said personal property, and if said threats are carried out it will be disabled from performing its said public duty and from maintaining and carrying on its railroad, and will be irreparably injured. That the damage which will be inflicted by such levy, distress and sale is not capable of being measured in money or repaired by the payment of damages.

That the county collector, defendant, will also, unless restrained, enforce payment of said pretended taxes and levy and sale, if defendant collector alone should be restrained.

8. That appellee had no notice of the meeting of the new state board on November 22, 1901, nor any opportunity to be heard.

9. The effect of the acts of the new state board in assessing and of the county clerk in extending said pretended new taxes for 1900 and in issuing the warrant, and of the defendant in demanding payment and threatening to levy as aforesaid, and his proposed action in collecting the same if not re-

strained, will be to deprive appellant of its property without due process of law in violation of the fourteenth amendment to the Constitution of the United States. (Tr., p. 11.)

10. That the old board of equalization by its assessment for 1900, which was made in 1900, beginning September 10th and extending to December 3rd, when it completed its work and adjourned without day, regularly assesed and valued the assessments of property in the different counties, and assessed the railroad property and the capital stock of these corporations as required by law for that year, and in so doing assesed and valued the capital stock of 334 corporations in Illinois other than railway companies, and including the capital stock of appellee; that the assessment and valuation of the capital stock of each of said 334 companies, including appellee, was made at the same time and upon the same basis of standard of value, each with the other, according to the best judgment of said state board, and was made in obedience to and in accordance with law, and, as to appellee, upon the same basis and standard of value and none other than that which was adopted by said board in assessing the capital stock of the other 333 companies; that the said assessment and equalization by the old board at its session in 1900 and for the year 1900 were so made according to the judgment of said board that every person and corporation in Illinois should pay the tax for the year 1900 in proportion to his property. (Tr., p. 12.)

11. That the new board, on November 22, 1901, in making the pretended new assessment for the year 1900, arbitrarily selected twenty companies,

including appellee, out of the class of 334 companies (of which 334 there are about 125 which are situated in Cook County) and arbitrarily assumed to and did assess the capital stock of those twenty and none other, and knowingly and intentionally assessed appellee's capital stock upon a ratio and standard of value several times as high as the standard of value observed by the regular state board for 1900 in the assessment and equalization of property and assessment of property for 1900. (Tr., p. 12.)

12. That the pretended assessment by the new board on November 22, 1901, against appellee's capital stock is very much more than the fair cash value thereof on the 1st day of April, 1900. That the new board and its members well knew and intended, at the time of making the same, that the same was greatly in excess of the fair cash value.

13. That the same was made on an entirely different and very much higher ratio than that adopted by the old board for the rest of the corporations, and that the assessments of the rest of the corporations, other than the twenty selected for attack, stand unimpeached and unchanged, and were observed and followed in the extension and collection of taxes against 314 companies out of said 334. (Tr., p. 13.)

That the new board intended and purposed in making the assessment to make gross and excessive discrimination against appellee, and knew and intended that appellee should be compelled to pay as and for 1900 a tax not in proportion to the value of its property, but discriminating, excessive and

unjust, and that the amount of said pretended tax is not proportionate, but many times as much as a just or uniform tax. (Tr., p. 14.)

14. That by the attempted collection of this pretended tax appellee is denied the equal protection of the laws, in violation of Section 1 of the Fourteenth Amendment to the Constitution of the United States. (Tr., p. 14.)

15. That on April 1, 1900, there were created and existing under the Illinois laws a vast number of manufacturing corporations, coal companies, printing companies and stock breeding companies, each having a large amount of capital stock of a value in excess of their tangible property respectively, but the State of Illinois by the Act of March 30, 1872, caused said companies to be assessed for 1900 only by local assessors in like manner as individuals; that is, upon their tangible property only and not upon any capital stock, and did not cause the same to be assessed by the state board of equalization, and thereby discriminated against said appellee, and thereby the state denied to appellee the equal protection of the laws. (Tr., p. 15.)

16. That appellants sometimes pretend that the original assessment for 1900 by the old board was void. That included in the original taxes for 1900 were taxes paid by appellee for the State of Illinois, Cook County, Chicago, Town of Hyde Park, Sanitary District of Chicago, South Park Commissioners, each of whom received money paid by appellee and used the same for its own uses, and no part has ever been repaid to appellee. (Tr., pp. 15, 16.) That said assessment is unimpeachable,

and that the state, and its several municipalities and agencies, and the defendants and all other persons, are estopped from attacking it.

17. While the old board were in session in November, 1900, Catherine Goggin and Robert C. Steele filed a mandamus petition in the Sangamon County Circuit Court of Illinois, against the old board, praying the court to order the old board, by mandamus, to assess the capital stock and franchises of appellee and twenty-two other companies, and to do so at the then present annual meeting of the board, and before its adjournment. (Tr., p. 16.) That the old board answered November 24th, while still in session, and assessed said capital stock at said session on December 3, 1900, and then adjourned without day. That on May 1st the Sangamon County Circuit Court ordered that a peremptory writ issue as prayed, in so far as the property of appellee was concerned, and commanding the board to convene and re-assess the capital stock of appellee and said 19 other companies, *as of April 1, 1900,* and to certify the same, and put the tax upon same as for 1900 in course of collection. (Tr., pp. 17, 18.)

That afterwards on November 2, 1901, the mandamus writ was issued out of that court peremptorily commanding the members of the new Board to obey the judgment against the old Board forthwith.

And appellants pretend that said pretended new assessment of appellee's capital stock was made by the new board November 22, 1901, in obedience to that judgment and writ of mandamus.

But appellee insists that it was in no way a party or privy to said mandamus case. That the proceed-

ings therein were wholly *inter alios* and void as against appellee. That said pretended judgment in said mandamus case was rendered long after the old board had completed its work and adjourned, and long after the assessments and equalization made by the old board had been certified to the county clerk, and the taxes extended thereon and put in course of collection, and after the tax so levied upon appellee had been collected and paid. (Tr., pp. 18, 19.)

That the new board, in the pretended new assessment of November 22, 1901, believed they were required to adopt and carry out in said assessment, as the fair cash value of appellee's capital stock, a sum which they understood and believed the judge of the Sangamon Circuit Court had found in said mandamus case to be the fair cash value, and not such sum as the board itself or its members, of their own knowledge and judgment, without coercion or control of judgment should determine. That said pretended new assessment of November 22, 1901, was not the action or judgment of the state board or its members, but that of the judge of the Sangamon County Circuit Court, and that the members of the board believed that unless they adopted the view of said judge as to the value of the capital stock they might be adjudged guilty of contempt of that court and punished therefor. (Tr., p. 19.)

That the enforcement of said assessment and tax against appellee would bind appellee and its property by the mandamus proceedings to which it was not a party, and deprive appellee of its property without due process of law in violation of the fourteenth amendment.

That the mandamus proceeding was begun November 10, 1900, when the old board was in session and before it had completed its work or assessed the capital stock of appellee with the other corporations; that the acts of the old board in reference to the nineteen corporations mentioned in the mandamus proceeding were the same as its acts with reference to all other corporations in the state; that the acts of the old board thereafter in assessing the capital stock of appellee were the same as to appellee and all of the 334 corporations, and all of the nineteen selected corporations mentioned in the mandamus case; that the mandamus proceedings assailed twenty corporations arbitrarily selected from the list of 334, and arbitrarily and intentionally discriminated against appellee and made the pretended assessment of November 22, 1901, upon a greatly excessive and entirely different standard of value from that of the other corporations not so again assessed; that to bind appellee or its property thereby would deny it the equal protection of the laws, in violation of the fourteenth amendment. (Tr., p. 21.)

18. That appellee has paid all of the taxes of 1900 which were legally assessed or levied against it. That there is no part of the said pretended new assessment due from appellee, but appellee offers to do equity, and in case any part of the just, legal taxes for 1900 is found or decreed to be due and unpaid (which appellee denies) appellee is ready and willing to pay whatever may be found due and unpaid.

19. The amount in dispute exceeds $2,000 exclusive of interest and costs.

20. That the pretended new assessment gives no credit for the sum previously paid by the appellee as the taxes for 1900 (amounting to $6,408.05, or thereabouts), and the sum of $33,569.40 sought to be collected by the defendants as taxes for 1900 and sought herein to be enjoined, makes no credit for the taxes of 1900 upon the capital stock which appellee had theretofore already paid.

Prayer for answer and injunction, and for final decree that the pretended assessment is void and that the tax extended thereon be decreed to be in violation of the constitutional rights of appellee and of the said provisions of the constitution and null and void, and that the injunction may be made perpetual, and for further relief. Prayer for process. (Tr., p. 22.)

ANSWER OF DEFENDANTS.

1. Admit the organization and capitalization and indebtedness of the appellee.

2. Admits official position of defendants as collectors. (Tr., p. 23.)

3. Admit the making of the assessment of 1900 on the property of the appellee by the Cook County Board of Assessors and the review of the same by the Cook County Board of Review. (Tr., pp. 23-4.)

4. Admit the organization and the proceedings of the old board as alleged in the bill, but allege that the assessment by the old board ought to have been higher, and that the action of the old board in making said assessment was illegal, and had been found so by the Sangamon County Circuit Court prior to the filing of this bill. (Tr., p. 24.) Admit

that the tax was extended on the assessment of the old board, and,

5. Admit that appellee paid the taxes for 1900 assessed against it.

6. Admit the election of a new board of equalization in November, 1900.

7. Admit that the new board did, in 1901, make a re-assessment of the capital stock of appellee as for the year 1900. Admit that the taxes were extended thereon, and that the collectors are proceeding to collect the same, and will do so unless same are paid.

8. Deny that appellee had no notice of the meeting of the new board in November, 1901. Allege that appellee did know and had an opportunity to be heard. (Tr., pp. 25, 26.)

9. Deny that the collection of the new tax, or any part of it, will deprive appellee of its property without process of law.

10. Say they have no knowledge of the proceedings of the old board in making assessments of corporations.

11. Deny that the new board, in 1901, assessed the capital stock of appellee at a higher ratio than others, and deny that other corporations were omitted from the assessment of 1900.

12. Deny that the new assessment in 1901 for the year 1900, as to appellee and the other nineteen corporations, was excessive or greater than that of others.

13. Deny that the ratio or standard of value adopted by the new board in the pretended re-

assessment was higher than that on other properties for the year 1900 or different from that on the capital stock of corporations generally in Illinois in 1900. Deny that the old tax on appellee was a just and uniform tax. (Tr., pp. 26, 27.)

14-15. Deny that the enforcement of the tax upon the re-assessment will deny to appellee the equal protection of the laws, or of its property without due process of law, or any of the rights protected by the Constitution of the United States.

16. Allege that the assessment by the old board in 1900 for the year 1900 was void and was so held in the mandamus case, and deny that there is any estoppel from asserting that same is void.

17. Admit that while the old board was in session Miss Goggin and Mr. Steele petitioned for a mandamus to compel them to assess the capital stock of the said twenty corporations. Admit that appellee was not a party, but state that appellee was required to appear; that appellee, acting with other companies, employed attorneys who did appear and resist said proceeding, and that appellee is bound thereby. (Tr., pp. 27, 28.) Allege that the Supreme Court of Illinois has affirmed the judgment in the mandamus case. Allege that the subsequent re-assessment was made "in pursuance to the said mandate of the said Circuit Court of Sangamon County," but deny that the members of the board did not believe in it, or were not satisfied with it, or believed that they could not act on their own judgment, and deny that it was not upon their own judgment.

18. Deny that appellee has fully paid the taxes for 1900, which were legally assessed. (Tr., p. 28.)

Afterwards the City of Chicago filed a separate answer, substantially repeating these allegations. (Tr., pp. 71-77.)

MASTER'S REPORT.

"In obedience to order of court, entered April 25, 1902, by which it was referred to the undersigned, to ascertain and report the amount of additional taxes to be paid by appellee for 1900, upon the basis prescribed therein, * * * I find and report that the amount of additional taxes to be paid by complainant herein as aforesaid is $184.88. This result is the sum I have arrived at by the computation shown in the following statement * * * which I find to be established by the testimony:

Gross earnings		$213,103.34
Operating expenses	$138,751.47	
Six per cent. of the full value of $597,142.85, for depreciation	35,828.57	
Deduct additional taxes to be paid	184.88	174,764.92
True net earnings		$ 38,338.42
Capitalized at 6%, gives full value		638,973.66
Take 70% for equalized value		447 [illegible]1.57
Take one-fifth for assessed valuation		$ 89,456.31
Total tax at rate of .0737		$ 6,592.93
Deduct tax paid		6,408.05
Tax to be paid		$ 184.88

Other computations have been furnished me, and I have carefully examined them and considered them, and heard the suggestions of counsel in support of them, but I have not adopted such computations because they are not, in my opinion, supported

by the testimony on the basis of calculation prescribed in said order."

At the end of the transcript in the case (p. 113) appears a stipulation that the clerk of the court

> "may prepare and transmit to the clerk of the Supreme Court of the United States at Washington, D. C., the following pleadings, proceedings and papers which are different in this cause from the corresponding pleadings, proceedings and papers in said cause of the Chicago Union Traction Company," viz.:

1. Bill; 2. Answer;

> "3. Master's' report filed June 9, 1902, together with the depositions of all witnesses filed on said 9th day of June, 1902, and attached to said master's report, together with all exhibits accompanying the same."

4. Answer of Chicago; 5. Final decree; 6. Order correcting final decree; 7. Petition for appeal and assignment of errors; 8. Appeal bond. And, * * *

> "inasmuch as many of the papers, pleadings, proceedings and orders in this cause are identical with the corresponding papers, pleadings, proceedings and orders in said cause of the Chicago Union Traction Company * * * now it is hereby further agreed that for the purpose of considering this appeal the transcript of the records in this cause to be used in the Supreme Court of the United States shall consist of the papers, pleadings, proceedings and orders contained in the cause of the Chicago Union Traction Company * * * which it is hereby agreed are identical with the corresponding pleadings, papers, proceedings and orders had in this cause, except in so far as the transcript in this cause has been made up by filing a transcript of the papers, records, proceedings and orders above specifically enumerated."

The order of reference must be found in the transcript of the Union Traction case.

On pages 2 and 3 of that transcript it appears that in that case the order of reference which had previously been entered in the McKnight case was adopted and taken over by reference. That states the basis of computation as follows:

ORDER OF REFERENCE.

"Said master is directed to ascertain and determine the amount of said additional taxes upon the following basis:

The full value of the complainant's capital stock and franchises on April 1, 1900, shall be ascertained by capitalizing the true net earnings of complainant in its fiscal year covering April 1, 1900, upon a ratio or basis of six per cent. (6%), that is to say, said full value shall be taken to be sixteen and two-thirds (16 2/3) times said net earnings. This full value shall be equalized by deducting thirty per cent. (30%) therefrom and one-fifth (1/5) of said equalized value so ascertained shall be taken as the equalized value upon which complainant should have paid taxes for the year 1900, and upon said amount or equalized assessed value so ascertained taxes at the true rate for year 1900, of not to exceed 8.817 per cent. (exclusive of interest and penalties) shall be computed or extended, and from the amount of the taxes so ascertained shall be subtracted the taxes already paid by complainant for the year 1900, and the balance will be the sum to be reported by the master as the additional taxes which should be paid by the complainant for the year 1900.

It is further ordered that in ascertaining the true net earnings of complainant for the year 1900 a deduction from the gross earnings of complainant for that year shall be made of six

per cent. (6%) of the value of its tangible personal property in the year 1900, and also of the amount of additional taxes for the year 1900, which should be paid by complainant as ascertained under this order of reference."

No objection or exception to the entry of this order appears in this South Chicago case nor in the Union Traction case, nor is any taken over from the McKnight case.

The basis so laid down was not objected to.

There are no objections or exceptions to the master's report in the case at bar.

This report is brought up in full, according to the stipulation, because "*different in this case from the corresponding pleadings, proceedings and papers in said cause of the Chicago Union Traction Company,*" but no objections or exceptions to this report are brought up.

The decree in the case at bar affirms and approves the master's report. (Tr., p. 78.) Appellant seeks to reverse this decree approving the master's report as erroneous.

The master's report was made upon a basis laid down in the order of reference. The transcript does not show that appellants, defendants, objected or excepted to the basis laid down in the order of reference, or objected or excepted to the master's report when made.

The record does not disclose a sufficient foundation for attacking the decree. But if the objections and exceptions in the Traction case are to be taken over and applied here they do not present any ground for reversal.

THE DECREE OF THE CIRCUIT COURT.

The court below, by its final decree, pp. 78-80, approved and confirmed the master's report, and further decreed as follows:

> "That it has jurisdiction of all of the parties hereto and of the subject-matter hereof, and that all the material allegations of the bill of complaint are sustained by the evidence, and that the equities of the case are with the complainant; and thereupon the court doth order, adjudge and decree as follows:
>
> "That the assessment made by the State Board of Equalization of the State of Illinois, at its session in 1901, against the complainant, the South Chicago City Railway Company, upon its capital stock, for the year 1900 (the net amount of said assessment being $433,886), was made under the coercive influence of a writ of mandamus, issued by the Circuit Court of Sangamon County, in the State of Illinois, and does not represent the real or independent judgment of the said State Board of Equalization, and that the assessments made by the State Board of Equalization, at its meeting held in 1901, upon the capital stock of the said complainant and upon the capital stock of the other corporations named in the writ of mandamus above mentioned, for the year 1900, was in fact made upon a materially different basis from that upon which the capital stock of all other corporations of the same class was assessed for the year 1900 by the State Board of Equalization, and also upon a basis materially different from that upon which all other taxable property in the State of Illinois was assessed for the year 1900; that said assessment made in 1901 upon the capital stock of the complainant for the year 1900 was made under the coercive influence of said mandamus without the exercise or application of the judgment of the State Board of Equalization, or the members thereof, to the as-

certainment of the value of said capital stock, and without the State Board of Equalization, either in fact or in form, taking into consideration the basis upon which all other taxable property in the State of Illinois was assessed and taxed for the year 1900, and without in fact or in form equalizing the valuation or assessment of the capital stock of said complainant for the year 1900 with all or any of the assessments made up on the other taxable property in the State of Illinois for the year 1900, with the result that the said assessment upon the capital stock of complainant, made in the year 1901 for the year 1900, was made on a much higher basis than that upon which the other taxable property of the State of Illinois was assessed and taxed for the year 1900; that the said assessment, made in the year 1901 for the year 1900, by the State Board of Equalization, was made without notice thereof to the complainant or opportunity to the complainant to appear and be heard in respect thereto; and that in making said assessment said State Board of Equalization did not take into consideration the fact that the capital stock tax on complainant's capital stock for the year 1900 had been theretofore assessed by the State Board of Equalization and had been theretofore paid by the complainant; that said assessment upon said capital stock for the year 1900 was and is unjust and inequitable; that the making of said assessment as aforesaid in 1901 upon the capital stock of said complainant, and the extension of taxes thereon, and the attempt to enforce the payment of such taxes so extended, from complainant, was and is a violation of the Fourteenth Amendment to the Constitution of the United States, and that the attempt to enforce the collection from complainant of the taxes extended on said reassessment will, unless restrained, result in a multiplicity of suits and an irreparable injury to the complainant.

"An order was entered herein on the 28th day

of June, 1902, as a condition precedent to the granting of the temporary relief prayed for in the bill of complaint herein, that complainant should pay in addition to the tax already paid upon the first or original capital stock assessment for the year 1900, the further sum of $184.88, making a total tax to be paid by the complainant for the year 1900 of $6,592.93, which is found and decreed by the court to be all that complainant should be required to pay as taxes for the year 1900. Said additional sum of $184.88 has been paid by the complainant to the County Treasurer of Cook County in compliance with said order, making the total amount paid by complainant as taxes for the year 1900 the said sum of $6,592.93.

"It is therefore ordered, adjudged and decreed that the said assessment of $433,886, on the capital stock of complainant, made by the State Board of Equalization in the year 1901 for the year 1900, and all taxes levied and extended thereon, and now held upon the books of the tax collecting agencies of the City of Chicago, County of Cook and State of Illinois, for collection, be and they are and each of them is, illegal, null and void, and that the defendants, James Baird, Town Collector of the Town of Hyde Park, and his successor and successors in office, as such Town Collector, and the defendant, Samuel B. Raymond, County Treasurer of Cook County, Illinois, and ex-officio County Collector of said county, and his successor and successors in office, as such County Treasurer and ex officio County Collector, and the defendant the City of Chicago, and each of them, and each and every of their respective agents, deputies, servants, attorneys and representatives, be and they are, and each of them is, hereby perpetually enjoined and restrained from in anywise levying or collecting or in any manner attempting, directly or indirectly, to levy or collect or to enforce against the complainant or against any of its property, said tax or taxes, or any or either of them, or any part thereof."

This is the decree from which the present appeal was prosecuted.

Summary of Facts.

The bill upon its face shows that the new assessment by the new board, made in November, 1901, for and as of the year 1900, was made by a board elected in 1900, whose duty it was to equalize taxes and assess the capital stock of all the corporations in the state for the four years 1901 to 1905, inclusive; that the assessment for the year 1900 upon the capital stock of appellee had already been made by the old board which had been elected in 1896 for the performance of the duty of equalizing the taxes and assessing the capital stock of all the corporations in the state for the four years from 1897 to 1900, inclusive; that they had assessed the capital stock of appellee in the same manner and upon the same basis and by the same method as they had all the other corporations in the state; that the new board, acting under the compulsion of the mandamus awarded in a proceeding in which appellee was not a party, and at a time and place of which appellee had no notice, had proceeded arbitrarily to make a new assessment upon appellee's capital stock in 1901 for the year 1900 at a figure which had been fixed for it in the mandamus proceeding; that this figure did not represent the judgment of the board, but it simply represented the coercive action of the board in obedience to a peremptory mandamus; that this mandamus was directed against the capital stock of appellee and nineteen other companies out of a list of 334 companies; that the amount of the assessment and of the taxes expended thereon was

at a much higher rate and on a diffeernt basis from and was several times as much in amount as was levied on the great body of the capital stock of the corporations in the state; that the old tax was extended by the same body that equalized all the taxes on all the property of the state, and in such a way as to represent the fair and equal share of this capital stock as part of the total property of the state; while the new assessment was made at a special meeting of the new board against the twenty companies concerned and no one else, without any reference to the equalization of the burden of taxation with the other corporations or with the rest of the property of the state. It was unequal in method; it was unequal in amount; it was unequal in basis; it was unequal in burden. It deprived appellee of the equal protection of the laws, in violation of the fourteenth amendment of the Constitution of the United States. In order to point out the detail of the operation a little more fully, we beg to submit the following statement:

The State Board of Equalization consists of one member from each congressional district in the state, elected as provided in the Revenue Act, and the Auditor of Public Accounts. The members elected in the twenty-two congressional districts are elected to hold office for four years. (Rev. Stat. Ill., Ch. 120, Secs. 100-101.) A new board was elected at the general election in the fall of 1900, to serve for four years, beginning with the second Tuesday in August, 1901, and equalize the assessment and assess the capital stock of companies for the years 1901-1904, inclusive. The board meets annually at such time as the law prescribes, for the purpose of

equalization of assessments and for the assessment of such property as is committed to the board. Under the Revenue Law, approved February 25, 1898, the annual meeting of the board is fixed for the first Tuesday after the 10th day of September. In the year 1900 this was September 11th, at which time the board met in annual session for the purpose of equalization of the assessments for that year.

Paragraph 4 of Section 3 of the Revenue Act, Revised Statutes of Illinois, Chap. 120, provides as follows:

> *Fourth.* The capital stock of all companies and associations now or hereafter created under the laws of this state, except those required to be assessed by the local assessors, as hereinafter provided, shall be so valued by the State Board of Equalization as to ascertain and determine respectively, the fair cash value of such capital stock, including the franchise, over and above the assessed value of the tangible property of such company or association; such board shall adopt such rules and principles for ascertaining the fair cash value of such capital stock, as to it may seem equitable and just, and such rules and principles when so adopted, if not inconsistent with this act, shall be as binding and of the same effect as if contained in this act, subject, however, to such change, alteration or amendment as may be found from time to time to be necessary by said board."

At said annual session of said State Board in and for said year 1900 the capital stock of complainant was so valued by said State Board of Equalization as to ascertain the fair cash value of such capital stock, including the franchise, over and above the assessed value of

the tangible property of complainant; and ~~that~~ said State Board by said assessment did value and assess and determine the fair cash value of such capital stock, including the franchise, of complainant, over and above the assessed value of the tangible property of the complainant, at the sum of $250,000, and the one-fifth thereof, as the assessed value for the purposes of taxation for said year 1900, at the sum of $50,000. (Bill, p. 6.)

The taxes for said year 1900 were duly extended upon said assessment, and the tax books and warrant made, issued and delivered to the Collector of said Town of Hyde Park for collection, and that said Collector demanded and exacted from complainant and complainant paid the full amount of said taxes for said year 1900 so levied, assessed and extended as aforesaid, in full satisfaction and discharge thereof; and that said Collector gave a receipt therefor, as required by said statutes; and that said moneys were received by the state, county, city and other municipalities, boards and public agencies, and applied to the purposes for which the same were so levied and collected. (*Id.*, pp. 7-9.)

Long afterwards, on or about November 22, 1901, the members of the State Board of Equalization, who were elected at said general election in November, 1900, assumed to assemble and did assemble at the state capital in Illinois, and without any notice to or hearing of complainant, did assume to assess the capital stock of complainant for the year 1900, notwithstanding that said assessment had been made therefor in the year 1900 and the taxes levied, assessed and paid as aforesaid; and in said pretended assessment of November 22,

1901, for the year 1900, said State Board assumed to assess and value the capital stock of complainant and to determine the fair cash value of such capital stock, including the franchise, over and above the assessed value of the tangible property for said year 1900, to be the sum of $2,169,430, and the one-fifth thereof, as the assessed value for the purposes of taxation for said year 1900, to be the sum of $433,886.

The second assessment was nearly nine times as much as the assessment made in the year 1900.

The purpose of the assessment of the State Board of Equalization under the law above quoted, is to determine *the excess of the value of the capital stock, including the franchise, over and above the equalized assessed value of the tangible property.* As above stated, in the said alleged assessment of November 22, 1901, made for the year 1900, under the command of the Circuit Court of Sangamon County, said State Board assessed such excess at the sum of $2,169,430—one-fifth of which (which is taken as the assessed value) was $433,886. But in the assessment made by the same board for the year 1901, and made two or three weeks later, the same State Board *assessed said value of the capital stock, over and above the equalized assessed value of the tangible property for the year* 1901 *to be* $600,000, *and one-fifth thereof, taken as the assessed value, at* $120,000. Thus, by the assessment of 1901 for that year, such excess of value of the capital stock over the tangible property, although made at about the same time as said commanded assessment, was between one-fourth and one-third as much as was de-

termined by said board in said commanded assessment. Said two assessments are as follows:

Two Assessments made in November and December, 1901, by same Board on same property.

	For 1900 (coerced)	*For 1901 (uncoerced)*
Full value of capital stock (including tangible property)	$ 2,846,040	$ 1,454,130
1/5 thereof, as assessed value	569.208	292,862
Assessed value of tangible property (full value)	676,610	864,130
1/5 thereof, as assessed value	135,322	172,826
Assessment of capital stock, over and above tangible property	2,169,430	600,000
1/5 thereof, as assessed value	433,886	120,000

The road pays no dividend. For four years prior and up to April 1, 1900—the date for which said assessment was made—the earnings of complainant have not been sufficient to meet the interest upon its bonded indebtedness.

The State Board of Equalization in making said assessment, (1) did knowingly and intentionally assess the capital stock of complainant according to and upon a ratio and standard of value several times as high as the standard of value which was adopted and observed by said State Board for the equalization and assessment of property for the year 1900, and according to which the equalization and assessment of property, includ-

ing the assessment of capital stock of corporations, for said year 1900, was made by the said State Board of Equalization (Bill, p. 19); (2) and the State Board well knew and intended at the time of making and in making said assessment last mentioned, that said assessment last mentioned was greatly in excess of the fair cash value of the capital stock of complainant and greatly in excess of valuations and assessments for the year 1900 of the capital stock of other corporations; and that said assessment was very much more than the fair cash value of the capital stock of complainant on April 1, 1900 (*id.*, p. 20); (3) and the State Board in making said assessment well knew and intended that said assessment of the capital stock of complainant so made, should be and was upon said different and much higher basis, ratio and standard of value than the assessment of the remaining corporations, and intended and purposed in making said assessment of complainant's capital stock, to make such gross and excessive discrimination against complainant, and well knew and intended and purposed that by said assessment and the extension thereon of the taxes for 1900, complainant would be compelled to pay for said year 1900 a tax which should not be in proportion to the value of its property, but should be discriminating and excessive and unjust (*id.*, 21); (4) and the State Board in making said assessment made the same, not upon or according to their own judgment, nor at such sum as they, from the best information obtainable by them and upon their own judgment, determined, or would have determined, the fair cash value of complainant's capital stock

on April 1, 1900, to have been, but at such sum as they believed the Judge presiding in the Circuit Court of Sangamon County in said mandamus suit had conceived to be the fair cash value of such capital stock; and that said State Board and the members thereof in making said assessment believed that unless they made the said assessment in the manner as made, as aforesaid, their return to said writ of mandamus would not be accepted as a compliance with said writ, and that they might be thereon adjudged guilty of contempt for said Sangamon Circuit Court and be punished therefor; and that said assessment as made was made under coercion as aforesaid. (*id.*, 29-31.)

The complainant paid the taxes for the year 1900 levied and extended upon the said assessment upon its capital stock for the year 1900, which was made at the annual session of said State Board in the year 1900, amounting to the sum of $3,933.50; and that in the said assessment of November 22, 1901, and in the extension of the taxes thereon in the warrant therefor threatened to be collected and enforced by the collector, no allowance or credit is made therefor. The bill shows that the amount of the taxes made upon said assessment complained of and sought to be now collected, is the sum of $33,569.40. (*Id.*, 14.)

Bells Gap R. Co. v. *Pennsylvania*, 134 U. S., 593.

Booth v. *Lloyd*, 33 F. R., 593.

Santa Clara Co. v. *Southern Pac. R. Co.*, 18 F. R., affirmed in this court 118 U. S.

San Mateo Co. v. *Southern Pac. R. Co.*, 13 F. R., 722,

Transfer p. 31 to follows Point I.

Smyth v. *Ames*, 169 U. S., 466, at 516-18.

Railroad Co. v. *Mississippi*, 102 U. S., 140-141.

Walla Walla v. *Walla Walla Water Co.*, 172 U. S., 1, at 6-7.

Transfer to p. 31 Follower point I.

City Railway Co. v. *Citizens' Railroad Co.*, 166 U. S., 567, at 562.

Yazoo & Miss. Valley Ry. Co. v. *Adams*, 180 U. S., 1, at 15-16.

Ill. Cent. R. R. Co. v. *Adams*, 180 U. S., 28, at 35-37.

Vicksburg Water Works v. *City of Vicksburg*, 185 U. S., 65.

C., B. & Q. Ry. Co. v. *Chicago*, 166 U. S., 226.

Scott v. *McNeal*, 154 U. S., 34.

Yick Wo v. *Hopkins*, 118 U. S., 356.

BRIEF OF ARGUMENT AND AUTHORITIES.

I.

THE COURT BELOW HAD JURISDICTION.

Transfer in court here from pp. 29-30.

In this case federal questions are involved, not merely incidentally but directly and primarily. The bill shows that by the arbitrary and unequal action of the State of Illinois acting through the Sangamon County Circuit Court in commanding a new assessment of appellee's capital stock in a case in which appellee was not a party, and the action of the new State Board of Equalization coerced by such command, an arbitrary and unequal and excessive second tax has been laid upon appellee's capital stock for the year 1900, after the taxes for that year have been regularly levied, extended, paid to and collected by the lawfully constituted authority in the uniform and equal manner in which it had assessed and collected taxes upon all other property in the State; and unless enjoined therefrom the collecting officers of the State will proceed to collect such arbitrary, unequal and excessive second tax. This deprives them of the equal protection of the laws, and it deprives them of their property without due process of law. The Federal Court has jurisdiction to protect a citizen against such deprivation of the equal protection of the laws and against such deprivation of its property without due process of law.

A case calling for the exercise of such jurisdiction is one arising under the Constitution and Laws of the United States.

In such a case it is not necessary that the complainant and defendant should be citizens of different states in order to confer federal jurisdiction.

In *Walla Walla* v. *Walla Walla Water Co.*, 172 U. S., 1, at pp. 6 and 7, the court said:

> "The demurrer to the plaintiff's bill rested principally upon a want of jurisdiction of the court in certain particulars, hereinafter specified. *There was confessedly no diversity of citizenship,* and the case was treated by the court below as one *arising under the Constitution and laws of the United States.*
>
> "1. The jurisdiction depends specifically upon the allegation in the bill that defendants insist that the contract of the city with the plaintiff was not a valid and binding contract, either in respect to the stipulation binding the city not to erect, maintain or become interested in any system of water works other than those of the plaintiff, or in respect to the stipulation for furnishing water to the city by the plaintiff; and that, regardless of plaintiff's rights, the city refuses to be bound by the contract, and is proposing to borrow money to erect and maintain water works of its own, and become a competitor with the plaintiff for the trade and custom of the consumers of water. * * *
>
> "These allegations, upon their face, raise a question of the power of the city to impair the obligation of its contract with the plaintiff by the adoption of the ordinance of June 20, 1893."

In *City Railway Co.* v. *Citizens' Railroad Co.* (the Indianapolis case), 166 U. S., 557, at 562, the court said:

> "1. There can be no doubt that the Circuit

Court had jurisdiction of the case, *notwithstanding the fact that both parties are corporations and citizens of the State of Indiana.* It should be borne in mind in this connection that *jurisdiction depended upon the allegations of the bill,* and not upon the facts as they subsequently turned out to be. The gravamen of the bill is that, under the act of the General Assembly of 1861, and the ordinances of January 18, 1864, and April 7, 1880, the Citizens' Railroad Company had become vested with certain exclusive rights to operate a street railway in the City of Indianapolis, either in perpetuity or for the term of thirty years or thirty-seven years, which the city had attempted to impair by entering into a contract with the City Railway Company to lay and operate a railway upon the same streets.

"All that is necessary to establish the jurisdiction of the court is to show that the complainant had, or claimed in good faith to have, a contract with the city, which the latter had attempted to impair. * * *

"That the complainant had a contract with the city is entirely clear. It was so held by the Supreme Court of Indiana in the *Western Paving & Supply Co.* v. *Citizens' Street Railroad Co.,* 128 Ind., 525, in which the liability of the company for certain street improvements was discussed and passed upon. * * *

"That the city did attempt to impair this contract by the agreement of April 24, 1893, with the City Railway Company, *and its ordinance ratifying the same,* is equally clear."

In *Yazoo and Mississippi Valley Railway Co.* v. *Adams,* 180 U. S., 1 (which case went up from the Supreme Court of the State of Mississippi), it was held as follows:

"As it appeared from the record in this case and the opinion of the court, that the defendants relied upon certain charter rights, which

> they insisted had been impaired by subsequent legislative action; and the [Mississippi] Supreme Court held that no such rights existed, it was *held*, that it sufficiently appeared that there was a Federal question necessarily involved in the case, and not only must have been, but actually was, passed upon by the [Mississippi] Supreme Court."

On pages 15 and 16, the court says:

> "As we have often held, that where an impairment of a contract by state legislation is charged, the existence or non-existence of the contract is a Federal question, it is impossible to escape the conclusion that the foundation of the whole case was, whether there was really a contract which had been impaired, and that this was necessary to the determination of the case. As already stated, this was a Federal question, and the fact that the Supreme Court did not, in terms, discuss the contract clause of the Constitution, does not oust our jurisdiction. In view of this record and the opinions of the [Mississippi] Supreme Court, the certificate of the Chief Justice, that the validity of the state statutes was actually drawn in question under the contract clause of the Constitution, was but a further assurance of a fact, already appearing. The motion to dismiss must, therefore, be denied."

At the same time the court took the three cases of the three railroad companies, including the *Yazoo and Mississippi Valley R. R. Co.* v. *Adams*, which were appeals from the Circuit Court of the United States for the Southern District of Mississippi, growing out of the same transaction which are reported in the same volume as *Illinois Central R. R. Co.* v. *Adams*, 180 U. S., 28. There, the appellant was compelled to proceed both in the State court in resistance to an action at law

by a revenue agent of the state, and by bill for injunction in the Federal Circiut Court to enjoin that revenue agent from proceeding, and by a bill in the State court filed after the bill in the Federal court had been dismissed and intended to accomplish in that forum the same object which the Federal court had denied it for alleged want of jurisdiction. And it was contended there, that by going to the State court after jurisdiction had been denied it in the Federal court, it had waived, abandoned and lost its rights in the Federal court, even if they had existed, and that the judgment of the State court had become *res judicata* upon it.

But that contention was overruled, and the jurisdiction of the court was sustained, not only upon the ground of diverse citizenship as to the Illinois Central Railroad, but also upon the ground that the acts of the state officer under the state legislation presented a question arising under the Constitution and laws of the United States, and that jurisdiction was maintainable on behalf of the Mississippi corporation as well as on behalf of the Illinois corporation. The court said (pp. 35-37):

> "3. But we are also of opinion that the bill presents a case under the Constitution of the United States, and that *jurisdiction may be sustained upon that ground alone*. The bill set forth the provisions of the Constitution of 1869, and the interpretation put upon it in the case of *Mississippi Mills* v. *Cook*, 56 Miss., 40, rendered in 1878, wherein that court construed these provisions, and declared that they did not require the legislature to tax the property of corporations for pecuniary profits; that this ruling had been repeatedly affirmed and had become the settled rule of property in the state,

adopted and acted upon by the legislative, judicial and executive departments. The bill further alleged a continued course of legislative exemption of railway properties from taxation; that the railroad commission had never before denied the validity of the exemption of the Canton Company, nor attempted to assess that company for taxation; that the Constitution of 1890 expressly provided that exemptions from taxation to which corporations were legally entitled at the adoption of this Constitution should remain in full force and effect for the time of such exemptions, as expressed in their respective charters, or by the general laws, unless sooner repealed by the legislature, and that successive legislatures had, since the adoption of that constitution, refused to repeal exemptions contained in charters theretofore granted; that the plaintiff, upon the faith of this interpretation of the constitution of 1869, and of a provision in the charter of the Canton Company exempting it from taxation for twenty years, advanced over $2,500,000 to build and equip the road; that the same was built with the money so furnished; that a lease of such road was executed to plaintiff, and that it had since been and is now in possession of the property; that the charter, with its exemption, the right to lease and the lease itself, were contracts rightfully made in view of the settled law as declared, and were valid under the Constitution of Mississippi, as previously expounded, and that the obligations of these contracts were binding *as against any subsequent change of judicial decision.* The bill further averred, that the defendants, 'claiming to act under laws of said state, passed subsequently to said charter and its acceptance, are endeavoring to and will, illegally, impair and destroy the obligations of said charter contract, as aforesaid, unless restrained by your Honors, * * * and that they are also attempting and claim that they have succeeded in fastening

upon said railroad a first and paramount lien under acts of said state, passed in 1892 and 1894, and acts done by them in 1898, which displaces and is paramount to the lien to secure said mortgage bonds.' * * *

"The bill clearly avers a case arising under the Constitution of the United States, and is one of which the Circuit Court *would have jurisdiction irrespective of the citizenship of the parties.* As we had occasion to observe in *City Railway Company* v. *Citizens' Street Railroad Company*, 166 U. S., 557, 564, whether the state had or had not impaired the obligation of this contract was not a question which could properly be passed upon, on a motion to dismiss, so long as the complainant claimed in its bill that it had that effect, and such claim was apparently made in good faith and was not a frivolous one.' See, also, *New Orleans* v. *New Orleans Water Works Company*, 142 U. S., 79, 88."

To same effect is *Vicksburg Water Works Co.* v. *City of Vicksburg*, 185 U. S., 65.

DIVERSITY OF CITIZENSHIP IS NOT NECESSARY TO CONFER FEDERAL JURISDICTION WHERE THE BILL SHOWS THAT BY ACTION OF THE STATE COMPLAINANT WILL BE DEPRIVED OF ITS PROPERTY WITHOUT DUE PROCESS OF LAW, OR OF THE EQUAL PROTECTION OF THE LAWS IN BREACH OF THE FEDERAL CONSTITUTION.

City Railway Co. v. *Citizens' Railroad Co.*, 166 U. S., 557.

Walla Walla v. *Walla Walla Water Co.*, 172 U. S., 1.

Yazoo & Miss. Valley Ry. Co. v. *Adams*, 180 U. S., 1 and 26 (three cases).

Ill. Cent. R. R. Co. v. *Adams*, 180 U. S., 28.

Vicksburg Water Works v. *City of Vicksburg*, 185 U. S., 65.

Smyth v. *Ames*, 169 U. S., 466, at 516.
Riverside & A. Ry. Co. v. *City of Riverside*, 118 F. R., 736.

And the jurisdiction vested upon this ground, extends to every question in the case.

Osborn v. *Bank*, 22 U. S. (9 Wheat.), 738.
Mayor v. *Cooper*, 73 U. S. (6 Wall.), 247.
Tenn. v. *Davis*, 100 U. S., 257.
Penn. Mut. Ins. Co. v. *Austin*, 168 U. S., 685.
Gregory v. *Van Ee*, 160 U. S., 643, at 646.
Railroad Co. v. *Mississippi*, 102 U. S., 135, at 140, 141.

In *Reagan* v. *Farmers' Loan & Trust Co.*, 154 U. S., 362, at 390, Mr. Justice BREWER, speaking for the court, said:

> "A frequent and unquestioned exercise of jurisdiction of courts, state and Federal, is in restraining the collection of taxes, illegal in whole, or in part.
>
> Neither will the constitutionality of the statute, if that be conceded, avail to oust the Federal court of jurisdiction. A valid law may be wrongfully administered by officers of the state, and so as to make such administration an illegal burden and exaction upon the individual. A tax law, as it leaves the legislative hands, may not be obnoxious to any challenge, and yet the officers charged with the administration of that valid tax law may so act under it in the matter of assessment or collection as to work an illegal trespass upon the property rights of the individual. They may go beyond the powers thereby conferred, and when they do so the fact that they are assuming to act under a valid law will not oust the courts of jurisdiction to restrain their excessive and illegal acts."

Mr. Justice DAY, in *Louisville Trust Co.* v. *Stone, Auditor,* 107 Fed. Rep., 305, state the ground of jurisdiction clearly and indisputably as follows:

> "It may be conceded that, if the allegations of the bill are made out, there exists in respect to the property of complainant, and others similarly situated, a systematic, intentional, and illegal undervaluation of other property by the taxing officers of the state, which necessarily affects an unjust discrimination against the property of which the plaintiff is the owner, and a bill in equity will lie to restrain such illegal discrimination, and that in such cases Federal jurisdiction will arise because of the equal protection of the laws guaranteed by the fourteenth amendment."

To same effect per Mr. Justice FIELD is *San Mateo Co.* v. *Southern Pac. R. Co.,* 13 F. R., 722.

In *Delaware, etc., R. Co.* v. *Pennsylvania,* 198 U. S., 341 at 358, the court by Mr. Justice PECKHAM said:

> "But where the appraisement is arrived at by including therein tangible property which is beyond the jurisdiction of the state, and which, therefore, the assessing officers had no jurisdiction to appraise (and none could be given them by the statute), such an appraisement or assessment is absolutely illegal, as made without jurisdiction (by the assessing officers). The next question is whether there is a right to relief in a case like this, founded upon the provisions of the federal constitution. We think there is. The collection of a tax under such circumstances *would amount to a taking of property without due process of law, and a citizen is protected from such taking* by the Fourteenth Amendment. * * * Taxation of the coal in this case deprived the owner of its property without due process of law, as is held in the above case,

> and the owner is entitled to the protection of the Fourteenth Amendment, which prevents the taking of its property in that way."

Citing *Louisville, etc., Ferry Co.* v. *Kentucky,* 188 U. S., 385, where the rule is again clearly stated and applied.

THE COURT HAD JURISDICTION—THE CASES CITED CONTRA DO NOT DENY JURISDICTION.

There is nothing inconsistent with this rule in the cases cited *contra.* The State Railway tax cases, 92 U. S., 575, upon which the chief reliance *contra* is placed, declare that it is essential that a case for the restraining of the collection of taxes must be brought within some of the recognized foundations of equitable jurisdiction, and that mere errors or irregularities will not justify the court of equity in interposing by injunction to stay the collection of a tax. (92 U. S., 614.) The court incidentally remarked that:

> "A court of equity is, therefore, hampered in the exercise of its jurisdiction by the necessity of enjoining the tax complained of in whole or in part, without any power of doing complete justice or causing to be made a new assessment on any principle it may decide to be the right one. * * * These reasons and the weight of authority by which they are supported must always incline the court to require a clear case for equitable relief before it will sustain an injunction," etc. *Id.,* 615.

This clearly recognizes the jurisdiction.

Four years later, in *Cummings* v. *National Bank,* 101 U. S., 153, the court, speaking again by Mr. Justice MILLER, remarked:

> "The complainant, having paid to defendant, or into the Circuit Court for his use, the tax which was its true share of the public burden, the decree of the Circuit Court enjoining the collection of the remainder is affirmed."

The court by this means found a way to meet the difficulty which Mr. Justice MILLER had previously found.

This is precisely the practice which was pursued in the case at bar.

The Davidson case, 96 U. S., 97, came up on error to the Supreme Court of the State of Louisiana, and the court remarked of the tax considered there that:

> "It may possibly violate some of those principles of general constitutional law of which we could take jurisdiction if we were sitting in review of a Circuit Court of the United States, as we were in *Loan Association* v. *Topeka*, 20 Wal., 644. The proceeding there was a special assessment in which the tableau or roll of assessments was filed in the District Court of the state, and personal service of notice was had upon all owners. This was complied with and the party complainant here appeared and had a full and fair hearing in the court of the first instance, and afterwards in the Supreme Court."

These are precisely the incidents which are wanting in the case at bar.

Similarly, the Kelly case, 104 U. S., 78, came up on appeal from the Supreme Court of Pennsylvania, and in which the appellant had been allowed a review by the local board of revision, and then a hearing in the local Court of Common Pleas, and then in the Supreme Court of the state. The question of Federal

jurisdiction of the original bill was in no way involved.

The same is true of the case of the *Merchants' Bank* v. *Pennsylvania*, 167 U. S., 471, and of *Henderson Bridge Co.* v. *Henderson City*, 173 U. S., 592. While the latter case contains some strong expressions that the violation of the fourteenth amendment must be clearly shown (p. 615), there is no denial of jurisdiction.

So in *Missouri* v. *Dockery*, 191 U. S., 165, 171, the court remarked:

> "This is a writ of error to a state court, so that questions under the state constitution and laws cannot be considered, as they might be on error to a subordinate court of the United States."

So the case of *Travelers' Insurance Co.* v. *Connecticut*, 185 U. S., 364, went up from the Supreme Court of Connecticut. There was no denial of jurisdiction there, but it was held that the Connecticut statute did not conflict with either of the two clauses of the Federal constitution, and there the judgment of the state court was affirmed.

The Magoun case, 170 U. S., 283, involving the validity of the inheritance tax law of Illinois, was one in which the dismissal of the bill by the Federal Circuit Court was sustained as a proper decision upon the merits, on the ground that the classification of the estate of decedents as a class by themselves was not unequal merely because it gave the members of that class different treatment from that accorded to living property owners who were in another class. There was clearly an exercise of jurisdiction in that case.

The language in the Connolly case, 184 U. S., 540, at 561 and 2 (where the Illinois statute against trusts and combinations was held unconstitutional), putting the anti-trust statutes on a somewhat different basis from taxing statutes, is not a determination of the jurisdiction in tax cases. The quotation from the "Costs" case of *Gulf, Colorado & Santa Fe Co.* v. *Ellis,* 165 U. S., 150, that "arbitrary selection can never be justified by calling it classification. The equal protection demanded by the fourteenth amendment forbids this,"—is in point here as well as there.

The citations of the Civil Rights Cases, 109 U. S., 3, and *Strauder* v. *West Virginia,* 100 U. S., 303, and *Virginia* v. *Rives,* 100 U. S., 313, all of which arose out of alleged grievances of members of the colored race and invoked what we have now come to call the political aspects of the fourteenth amendment, seem not to help much in this discussion. And the same applies to the citation of the removal case, the political case of *Kentucky* v. *Powers,* 201 U. S., 1.

Concerning the Fourteenth Amendment, we may recall what was said by this court, by Mr. Justice Brown, in *Holden* v. *Hardy,* 169 U. S., 366, at 385, viz.:

> "The cases under the fourteenth amendment demonstrate that in passing on the validity of state legislation under it this court has not failed to recognize the fact that the law is to a certain extent a progressive science."

And that progress has been in the direction of recognizing wider applications of the Amendment.

and a greater variety of "*cases*" arising under it, and within the jurisdiction of the court, than was at first realized.

The Coulter case, 196 U. S., 599, clearly upholds the jurisdiction of the court, saying:

> "But *as the claim of right under the United States constitution was not merely colorable* (10 *Mutual Life Insurance Co.* v. *Austin*, 168 U. S., 685-695), and as the evidence is here, *we have considered the evidence also*, and our conclusion from that, as well as from the law, is that the bill must be dismissed."

And the ruling just quoted disposes of the case of *Manhattan Railway Company* v. *City of New York*, 18 Fed., 195, where it was decided that a *mere averment* was not sufficient to confer jurisdiction.

That the averment here has been made in good faith and proven by the evidence is shown by the fact that *the court below so found and decreed after full hearing.*

II.

THE STATE ACTS THROUGH THE STATE BOARD OF EQUALIZATION. ITS ACTS ARE THE ACTS OF THE STATE.

The State Board of Equalization was originally created by the Act of March 8, 1867, Ill. Pub. L. 1867, p. 105. This Act defined the duty of the board to be annually

> "to examine the abstracts of property assessed for taxation in the several counties of this state * * * and equalize the same by directing to be added to the amount of property so assessed in each county, or to be deducted therefrom, such rate per cent. as said board may deem equitable; * * *"

The constitution of the State of Illinois of 1870 provides in Article IX, Sec. 1:

> "The General Assembly shall provide such revenue as may be needful by levying a tax, by valuation, so that every person shall pay a tax in proportion to the value of his, her or its property—such value to be ascertained by some person or persons, to be elected or appointed in such manner as the General Assembly shall direct, and not otherwise; * * *."

Pursuant thereto, the General Assembly passed the Act of 1872 known as the "Revenue Act" and entitled "An Act for the assessment of property and for the levy and collection of taxes," which preserved the State Board of Equalization, and regulated its powers and duties. It is composed of one member from each Congressional district and the Auditor of Public Accounts.

The Auditor of Public Accounts is an officer created by Article V of the Constitution of 1870, and a member of the Executive Department. Revenue Act, 3 Starr & Curtiss' Annotated Statutes, 2d Ed., Ch. 120, par. 101.

The duties of the board under the Act of 1872 are:

To equalize the value of real and personal property throughout the state, both as between different counties, and as between certain different classes of property named in the statute, in such manner "as may be deemed by the board to be equitable and just" (*id.*, Sec. 107);

To assess the capital stock of each company or association incorporated under the laws of the State of Illinois (with certain specific exceptions, which do not include street railroad companies) (*id.*, Secs. 3, 32, 108);

To assess "Railroad Track" and "Rolling

Stock" of general railroad companies (*id.*, Sec. 109);

To assess the capital stock of general railroad companies and of telegraph companies (*id.*, Sec. 110).

The State Board of Equalization, by reason of its creation by the legislature and the nature of its duties and powers, is the supreme taxing agency of the sovereign state. It has the ultimate power to review and equalize the assessments made by local assessors, and is the only body which can assess the capital stock of corporations like appellee. An assessment by the State Board of Equalization, assessed, spread of record, and certified in the *forms* required by law, is an assessment by the state. Unless declared invalid or superseded, the state will by other officers, extend a tax thereon, and will enforce payment against the individual owner of the property covered by the assessment, by a levy upon the property, in all respects like an execution upon final judgment of a court of last resort; for the collecting officers have the power to levy the same by distress and sale of the personal property of the "person, company or corporation who ought to pay the same." (3 Starr & C., Chap. 120, par. 157.)

There is no appeal from the assessment made by the State Board of Equalization. Any redress must be obtained by an independent proceeding, directly attacking the constitutionality of the assessment, such as the one from which this appeal is prosecuted. The act of making the assessment becomes final and irrevocable when the State Board has made and certified the assessment. Its act is the act of the State.

The act of the state agency is the act of the State.

Reagan v. *Farmers' Loan & Trust Co.*, 154 U. S., 362.

Yick Wo v. *Hopkins*, 118 U. S., 356.

R. & Tel. Co. v. *Board of Equalization*, 85 F. R., 302.

Nashville, &c., R. Co. v. *Taylor*, 86 F. R., 168; same case on appeal, 88 F. R., 350.

Louisville Trust Co. v. *Stone*, 107 F. R., 305.

> "These prohibitions (of the constitution) extend to all acts of the state, whether through its legislative, *executive*, or its judicial authorities." *Scott* v. *McNeal*, 154 U. S., 34.

In the Barney case, 193 U. S., 430, the proposition decided was that in order to sustain the bill for an alleged violation of the 14th amendment it must appear at the outset that the alleged deprivation was *by the act of the state*. The deprivation complained of there was the location of the route of the rapid transit tunnel twenty-seven feet nearer complainant's premises than the plans to which he had consented, and it was held that this grievance did not show a violation of the 14th Amendment. The court said:

> "The bill on its face proceeded on the theory that the construction of the easterly tunnel section was not only not authorized, but *was forbidden by legislation*, and *hence was not action by the State of New York* within the intent and meaning of the 14th Amendment, and the Circuit Court was right for dismissing it for want of jurisdiction."

As we have seen, the action of the State Board of Equalization was the act of the state. The citation

of the case of *Michigan Central Railroad* v. *Powers*, 201 U. S., 245, at 301, that action by a state board of equalization at a regular meeting, the time and place of which are fixed by statute, and the session of which is open and public, and which the entire public are given an opportunity to attend, and of *Public Clearing House Co.* v. *Coyne*, 194 U. S., 497, sustaining the general United States postal regulations and fraud orders by a postmaster general in pursuance thereof, are not helpful to the court in this case, because, as it appears here, the new board was called together, *without notice*, to do *over again* the work which the old board *has done*.

And those cases in no way deny that the act of the State Board is the act of the State. The postal case of Coyne has, of course, nothing to do with this question; and the Powers Case implies State action in the action of the Board.

III.

THE RE-ASSESSMENT IN THE CASE DEPRIVED APPELLEE OF DUE PROCESS OF LAW, AND OF THE EQUAL PROTECTION OF THE LAWS.

It was established that the assessment for 1900 had regularly been made in 1900 by the State Board of Equalization, elected for that purpose, herein called the old Board;—that the tax upon its capital tax had been duly levied, and extended, and collected and paid. While the old Board were in session the Goggin mandamus was filed against the old Board, praying the court to order the old Board to assess appellee's stock, and do so before its adjournment.

(Bill, par. 17.) The old Board answered November 24th, while still in session, and on December 3rd, while still in session, made the assessment. (Bill, par. 4), and then adjourned without day. The new Board was elected in November, 1900, and assembled and organized in September, 1901. On May 1 the Sangamon Circuit Court ordered that a peremptory mandamus issue as prayed, in so far as the property of appellee was concerned, and commanding the new Board, and members thereof, to convene and re-assess the capital stock of appellee and said nineteen other companies *as of April* 1, 1900, and certify the same, and put the tax upon the same for 1900 in course of collection. That afterwards, on November 2, 1901, the mandamus writ was issued out of that court, returnable November 22nd, peremptorily commanding the members of the new Board to obey the judgment against the old Board forthwith.

Intervening between said judgment and the issuing of the writ, an appeal had been heard in the case, and the judgment affirmed.

Appellee was not a party to the case. The proceedings had no element of process of law against appellee.

In the opinion of the Supreme Court upon the appeal, examples were given of how such an assessment should be made. That is reported as *State Board of Equalization* v. *The People on the Relation of Catherine Goggin, et al.*, 191 Ill., 525 to 552. The new Board, on November 18, 1901, applied to the court for an extension of ten days' time in which to make the assessment upon these twenty companies.

in obedience to the peremptory writ. The court denied the application. The court said, in denying the application:

> "The contention is made that the mode of procedure is new to the Board, and that it requires more time. There is no reason the court sees why they should have proceeded otherwise than as commanded in the writ. The law is the same to-night as it was a year ago or ten years ago, as far as taxation is concerned in the State of Illinois. There has just simply been a declaration by the highest tribunal of this state that property must be assessed according to the manner prescribed by law and the statute, at its fair cash value.
>
> It is said further that the amount of work that they have had to do prevented them from devoting sufficient time to this. As the court views this case, no great amount of time is necessary for that Board to perform their duty. This court decided that what is ordered in the writ be done, and the Supreme Court affirmed that decision. The decision is explicit. There is no reason why any member of that Board should fail to understand exactly what his duty is. All this talk about complications as to whether they should proceed on that line or this line, or consider this thing or that thing, this amount of per cent. or that amount of per cent. of valuations, is just so much matter to quibble about. This assessment could have been made before the application for the remanding order. It could have been made in a very short time after the writ issued. This is one of the things that they should do. This is one of the orders that they should obey, because the time is fixed. They may put off to some other time the assessment of other classes of property, the general assessment for this year, but the assessment of the particular property mentioned in that writ is fixed for a particular date. That is the task which they should have addressed themselves to

earlier in the session, if they wanted to comply with the order of the court and obey the law, and that work they must complete at the time fixed."

(Traction Transcript, pp. 106-7.)

Thereupon the Board took the example given in the opinion of the Supreme Court as to the assessment of the People's Gas Company, and the tables of figures furnished by the petitioners for the mandamus, and *immediately made* and returned the new assessment of this capital stock for and as of April 1, 1900, as to the capital stock of this appellee, and of the nineteen other companies. The amount of property proposed to be taken from the appellee is $33,569.40. The appellee had already paid capital stock taxes for the year 1900, amounting to $6,408.05. This payment was ignored, and the tax itself so paid treated as a nullity, and the payment as a donation. The new tax levied by means of the mandamus, in which the appellee was not a party, is sought to be collected as a whole without credit for the payment made.

The appellee upon filing its bill offered to do equity and to pay whatever the court might find ought to be paid; and the court found through the medium of the master's report, which it affirmed, that error had intervened in the making of the assessment of 1900 by the old Board to the extent that there was an additional payment of $184.88 due from appellee, and as a condition of granting relief required this amount to be paid. Appellee paid this amount into court in compliance with the condition when the injunction was granted.

We submit that this re-assessment was not due process of law to take from this appellee its property; and denied it the *equal* protection of the laws.

"The first section of the 14th Amendment places a limit upon all the powers of the State, including, among others, that of taxation." *County of Santa Clara* v. *Southern Pacific R. Co.,* per FIELD, J., 18 F. R., 385 at 397, affirmed 118 U. S., 394.

1. The new assessment does not express the judgment of the Board. The evidence shows, and the court below find, that the new assessment was not the act of the new Board itself, but that:

> "Said assessment made in 1901 upon the capital stock of the complainant for the year 1900 was made under the coercive influence of said mandamus without the exercise or application of the judgment of the said Board of Equalization, or the members thereof, to the ascertainment of the value of said capital stock." Tr., p. 78.

This disregard of the requirement of the law is fatal.

C., B. & Q. R. Co. v. *Chicago,* 166 U. S., 226.

Illustrations of the necessity of adhering to such requirements as the law imposes in order to give the assessment the character of due process of law are afforded by the case of Schenck (Fed. Cases, No. 12,450) in which Mr. Justice MILLER held that where the law required an assessment by a board of three, action by two of the three, when the third had not qualified, constituted no assessment.

So, where *annual* levies are required, a levy in 1886 for the taxes of 1885 is invalid and a sale for non-payment thereof is set aside.

Berthold v. *Hopkins,* 38 F. R., 772.

So in *Martin* v. *Barber,* 34 Fed. Rep., 701, it was held that where the assessor failed to take the oath of office, there was no assessor and no assessment.

An assessment not made in the mode or on the principle prescribed by the statute is void.

Huntington v. *Central Pacific R. Co.,* 2 Sawy., 503; Fed. Cas. No. 6911.

2. The re-assessment was upon an *arbitrary* basis. It was not *equalized.* It was made, as was found by the decree of the court below.

> "Without the State Board of Equalization, either in fact or in form, taking into consideration the basis upon which all other taxable property in the State of Illinois was assessed and taxed for the year 1900, and without in fact or in form *equalizing* the valuation or assessment of the capital stock of said complainant for the year 1900 *with all or any of the asssessments made upon the other* taxable property in the State of Illinois for the year 1900, with the result that the assessment upon the capital stock of complainant made in the year 1901 for the year 1900, was made on a much higher basis than that upon which the other taxable property of the State of Illinois was assessed and taxed for the year 1900." (Tr., pp. 78-9.)

This denied to appellee the equal protection of the laws.

The inequality was so gross, the arbitrary exaction as to 20 companies out of 334, and as to those 20 companies in disregard of the standards used as to all other property so avowed as to violate alike the moral sense of the court and the letter and spirit of the 14th amendment.

Nashville, etc., R. Co. v. *Taylor,* 86 F. R., 183.

3. The re-assessment was made without notice. The finding of the decree below upon proofs, on this, is:

> "That the said assessment made in the year 1901 for the year 1900 by the said State Board of Equalization, was made without notice thereof to the complainant or opportunity to the complainant to appear and be heard in respect thereto."

4. The tax resulting from the reassessment is a *duplication* of the tax previously assessed, levied *and paid.*

The finding of the court below upon proofs, on this, is:

> "That in making said assessment said State Board of Equalization did not take into consideration the fact that the capital stock tax on complainant's capital stock for the year 1900 had been theretofore assessed by the State Board of Equalization and had been theretofore paid by the complainant."

IV.

THE TESTIMONY OF THE MEMBERS OF THE STATE BOARD THAT THEY WERE COERCED WAS COMPETENT.

The evidence shows that the State Board acted on the subject of capital stock assessments through a Capital Stock Committee of seven members. The peremptory writ of mandamus issued November 2, 1901, required the assessment to be made and return of the writ to be accomplished by November 22. On April 18, the Board applied for an extension of time of ten days. This the court denied, and in so doing delivered the opinion heretofore quoted. Acting un-

der the coercive influence of this command the Capital Stock Committee immediately drew up an assessment in the exact form prescribed by the direction of the court, and reported to the full Board, who adopted it and returned it in obedience to the mandamus. Four of the seven members of the Capital Stock Committee testified in substance that in doing this they did not act as free agents and did not use their own judgment; that they did not feel at liberty to do other than what they did.

Complaint is made by appellant's brief, pp. 28-9 that this evidence was incompetent. The objection is untenable.

The objection proceeds upon the theory that the Board of Equalization is like a jury, a body which cannot impeach its verdict.

This conception is a fundamental mistake. A jury consists of twelve men drawn by lot from the body of the community, who, after hearing the evidence and the arguments of counsel and the instructions of the court, are put in charge of a bailiff who takes them into a jury room where their deliberations are conducted in secret. (There are times when they agree upon a verdict without leaving their seats, but in such cases their *deliberations* are equally secret in the eye of the law.) When the jury have agreed upon their verdict and reduced it to writing and signed it, the bailiff conducts them again to the court room, where they deliver their verdict, are subjected to a poll, and discharged.

Six important differences will be noted: (1) Fundamentally, while the jury *acts in secret*, on the other hand, in the language of the brief for appel-

lant, p. 28, "The time and place of the sessions of the State Board of Equalization were fixed by law, and those sessions were public." This same statute was before this court in the State railroad tax cases, 92 U. S., 575, and at p. 610 this court said: "This Board has its time of sitting fixed by law. *Its sessions are not secret.*"

(2) The jury are drawn by lot and summoned in *invitum* to perform jury duty in a particular case, or for a particular term of court, while the members of the State Board of Equalization are elected by the people for the term of four years (3 Starr & Curtiss Annotated Statutes of Illinois, Chap. 120, Par. 102) to equalize the taxation of all the property and assess the capital stock of all the corporations in the State.

(3) The jury hear the pleadings, evidence on both sides and the arguments on both sides and the instructions of the court.

(4) The jury retire for secret deliberations under legal safeguards, after a full hearing of both sides in open court.

(5) Polling of the jury in open court at the demand of the party affected affords to the party affected and to the juror concerned alike a *locus penitentiae,* and the right of the party affected includes the right to see that he is called upon either to take or refuse the opportunity of repentance.

(6) The action of the jury is subject to double or triple review; first by the trial judge, then by superior and supreme courts of review. The State Board of Equalization is the original assessor of

capital stock. It is the first to act. It initiates its own procedure, and is subject to no review whatever. It is the first, last and only authority.

These differences might be developed and extended indefinitely, but sufficient has been pointed out to show why *the rules which pertain to the actions of jurors do not apply to those of the State Board of Equalization.* The law intends that *the jury shall sit in secret,* and in order to maintain and protect that secrecy the law provides that the jurors shall not impeach their verdict. *The law does not intend to prescribe any such secrecy in the action of the State Board.* The essence of appellant's contention in trying to invest the action of the State Board with the semblance of process is that it is a body with open public sessions at fixed times and places to which the public are invited.

This contention of the appellant is neutralized in the case at bar by the fact that the body sat without notice to do over again what the preceding Board had done;—but this contention of appellant is repugnant to its contention as to the evidence that the members of the Board shall not be allowed in a court of equity to state the process by which their assessment was made.

That contention is denied by the very decision in the mandamus case, 191 Ill., 540, where the court in seeking to justify the premature issue of the mandamus to compel a Board which was still in session and unadjourned to do what they were in the act of doing, says:

> "Thereafter, and prior to the filing of the petition, the Board did nothing towards the per-

> formance of its duty, *and some of its members stated nothing would be done.*"

Certainly in that case the court received evidence as to what some of its members stated.

But again, 191 Ill., 551, in the case case, the court said:

> "This is a civil suit, *and the members of the Board were competent witnesses,* and if it were true that the capital stock, including franchises, of said corporations were about to be or had been fairly and honestly valued and assessed, it would have been an easy matter for them to have explained to the court the method pursued by them in reaching the results which they obtained, and to have shown to the court that such results were proper and legal."

Here is the precise decision that this specific testimony, by the same witnesses, who gave it in the case at bar, is competent evidence.

As the appellee here was no party to that case, the failure of the State Board to give that testimony in that case concludes nothing as to this appellee.

But the decision there that those members were competent witnesses, and that they could have given in that case the same testimony which they afterwards gave in this case in which appellee was a party, is conclusive against the contention of appellant that this testimony was incompetent.

In *Pelton* v. *Nat. Bank,* 101 U. S., 143, such testimony was sustained and made decisive of the case by this court. Mr. Justice MILLER for the court said:

"The only witness who testified on the subject in this case at all was the auditor of the County of Cuyahoga for the years 1876 and '7, who had been for many years previously an employee in the auditor's office. He says that as county auditor he was a member of the Board of County Equalization and acted as such in equalizing during those years the valuation of the shares of the various national and other banks; that the valuation placed on the shares of national banks was higher in proportion than the valuation on other personal property including banking capital. He says that matter was talked over in the Board and it was their aim to make the valuation higher, and that their valuation of national bank shares was intentionally higher than the assessed value returned by private banks. * * * For this injustice and this violation of the law there ought to be some remedy. To the specific one of an injunction by a suit in chancery, and, indeed, to any remedy by the bank, many objections are raised; but as all of them have been considered and overruled in the case of *Cummings* v. *National Bank* (and *infra.*, 101 U. S., 153), which was argued at the same time this case was, it is unnecessary to repeat here what was said in that case."

In *Fargo* v. *Hart*, 183 U. S., 490, at 500, the court refer to such testimony, not only in that case but in another case as follows:

"In *Pittsburg, etc., R. Co.* v. *Backus*, there was reason to suspect an infraction of constitutional rights, but the Secretary of State *testified that there was no assessment of property outside of the State*, (154 U. S., 434) and therefore the court could not say that there was more than a possible over-valuation by the Board. * * * We come back to the question whether the taking of personal property outside the State into the assessment can be justi-

fied on the ground that it gives credit necessary for the business in the State. *The testimony was that the property was not necessary for that purpose, and in fact was not used.*"

A summary of this kind of evidence used and weighed by the court is given by Mr. Justice DAY in the opinion of the Court of Appeals in *Louisville Trust Co.* v. *Stone,* 107 F. R., 305, as follows (pp. 306, 307, 308):

"The contention upon this branch of the case is that the State Board of Equalization, in equalizing the other property of the state systematically and uniformly, and particularly in the years 1897 and 1898, assessed and valued other property at only 70 per cent. of its fair cash value. If this is true, there is manifest discrimination against the complainant. It has procured affidavits of 8 members of local boards of supervisors, before whom the returns of the assessors go, 26 county court clerks and ex-county court clerks, 31 sheriffs and ex-sheriffs, 24 county judges and ex-county judges, 3 county attorneys, 1 mayor, 1 magistrate, and 1 county treasurer; also the affidavits of certain persons who claimed at certain times to have appeared before the State Board of Equalization; also the affidavit of one George M. Willis, a member of the State Board of Equalization for the year 1898. The tendency of this testimony is to show that in the years mentioned the other property of taxpayers of the state was assessed at not above 70 per cent. of its fair cash value. Complainant also presents the affidavit of Mr. Johnson, deputy auditor, who undertook to make a comparison between the assessed values and the cash sales as reported by the clerks of the various county courts in the state with a view of ascertaining what proportion the assessed value bore to the prices of lands reported in said sales for the period between September 15, 1895, and the same date in 1896. The result

was that the assessed value of lands in 114 counties, as equalized by the Board of Equalization, is 71.89 per cent. of the total value of said lands as indicated by said sales. Mr. Johnson also stated that this was a year of very great depression in real estate values. He also produced a table showing the assessed value of farm lands of Kentucky for the years 1894 and 1898, inclusive, as equalized by the State Board. This table indicates but little variation in the equalized value of the lands for the years given. To meet this testimony, the appellees offered the affidavits of 95 county assessors, who assessed the real and personal property in their counties for the years 1897 and 1898, each of whom swears that the real and personal property of his county was assessed for taxation at its fair cash value, estimated at the price it would bring at a voluntary sale. The affidavits of 52 county clerks who were in office in 1897, and were ex-officio the clerks of the Board of Tax Supervisors, and 62 county clerks for the year 1898, were filed by appellees. These affidavits are, in substance, that the property was valued in like manner at its fair cash value. The affidavits of four members of the State Board of Equalization for the years 1897 and 1898 were offered in evidence, and they make oath that the rule of the members was to fix the value of all real estate, personal property, and town lots in each and every county in the state that was subject to taxation at its fair cash value, and that no attempt was made to value the property at 70 per cent., or any other per centum less than 100 per cent., of its fair cash value. Mr. Scott, chief secretary of the State Board of Equalization in the years 1897 and 1898, says, in his affidavit, that property was valued at its fair cash value; that when below this the value of the property was raised, and when above it was lowered; and that the Board had adopted a rule in these years to thus value property. He states that he made the calcula-

tions used by the Board in 1898; that he used a table showing the assessed value of farm lands and town lots for the past five years. He then ascertained what per centum should be added or deducted, as the case might be, from the farm lands and town lots to bring them to the average, and that he made like calculations for the years 1897 and 1898. These tables were laid before the Board, and they passed preliminarily upon the several counties; and he mailed notices to the 119 county judges of the action of the Board, notifying them of the day fixed to hear their county, and requested them to send witnesses, not exceeding five, one of whom should be the county assessor. The assessors, with some exceptions, testified that they had assessed the property at its fair value; that they endeavored to value the property at what it was worth, estimating the value in cash, and at a price it would bring at a fair voluntary sale. It appears that these several assessing officers were all sworn to assess the property at its fair cash value.

"Upon consideration, the proof seems to us to fail to make out a case by that preponderance of evidence which is required by a court of equity to justify interference with the action of the state officers in making the assessment of complainant's property."

While the court, as Mr. Justice DAY so clearly shows, carefully weighed and balanced the evidence of this kind on both sides and decided that in that case it did not sufficiently preponderate to justify the interference of equity, the case is for that very reason the strongest kind of authority that such evidence is competent.

As to the weight of the evidence in the case at bar it is sufficient to remark that it was all on one side, and it was overwhelming.

It is true that in the Coulter case, 196 U. S., some reflections are made upon the character of such evidence, and a summary of the evidence in that case is given by Mr. Justice HOLMES on pp. 606-7, and finally on p. 610 he said:

> "The testimony as to the Board of Equalization taking eighty per cent. of the reported sales, was explained by the members of the Board. It would be going very far to assume that they were committing perjury because to another mind the sales seemed more significant and the explanations not very good. Inequality, we repeat, is nothing, unless it was in pursuance of a scheme. To make out that scheme the anomalous course was followed of putting members of a tribunal established by law upon the witness stand to testify to the operations of their minds in doing the work entrusted to them. *Fayerweather* v. *Ritch*, 195 U. S., 276, 306, 307. But the prevailing testimony was that no such scheme was entertained."

That case was appealed in 1904 from the Circuit Court for Kentucky, where the case of *Louisville Trust Company* v. *Stone* had been tried shortly previous. The same character of evidence was received in the one case as in the other. The summary of the argument for appellants given in the report, 196 U. S., pp. 600-3, does not show that this evidence was complained of as incompetent, or that error was assigned for its reception, and the opinion does not indicate that its reception was held erroneous. The very cases which we have hereinbefore cited, in which this class of evidence was received and given controlling weight, do not seem to have been presented to the court in the Coulter case. If they had been, and the point had been raised and examined, it may well be doubted whether even the

passing reflection that the evidence is anomalous would have been recorded. It may be said indeed that the cases are anomalous; that the wrong called upon to be remedied is anomalous, and that the best evidence of which the nature of the case admits is competent and proper to be received. That this evidence of the officers was the best evidence and was competent, the numerous decisions of this court heretofore cited show.

The Fairweather case cited by Mr. Justice HOLMES was, of course, not a tax case nor a case of a member of a Board giving testimony, but the case of a judge of a court of record giving testimony as to his mental processes, as is said by Mr. Justice BREWER, 195 U. S., pp. 305-6:

> "Upon what is this contention based? First, the silence of the judgment; * * * finally the testimony of the trial judge, given on the hearing in this case some six years after his decision in the state court, to the effect that in deciding the case he did not consider the question of the validity of the releases. * * *
>
> But it is proper to say that the secret deliberations of the jury, or grounds of their proceedings while engaged in making up their verdict, are not competent or admissible evidence of the issues or finding. * * *
>
> Tested by the rule thus laid down the testimony of the trial judge, given six years after the case had been disposed of, in respect to the matters he considered and passed upon, was obviously incompetent. * * * True, the reasoning of the court for the rule is not wholly applicable, for as the case was tried before a single judge there were not two or more minds coming by different processes to the same result. Nevertheless no testimony should be received except of open and tangible facts—mat-

ters which are susceptible of evidence on both sides. A judgment is a solemn record. Parties have a right to rely upon it. It should not ~~likely~~ be disturbed, and ought never to be overthrown or limited by the oral testimony of a judge or juror of what he had in mind at the time of the decision. * * * Undoubtedly, when the pleadings are general, as in a case of the common counts, evidence may be given of the testimony which was introduced on the trial, for that may disclose what must have been considered and determined."

It will be seen that the court applied to the action of the judge the same rule, and partly for the same reasons, which apply to a juror. We have already shown that this has no application to a Board of Equalization. Again, it will be seen that the court recognizes an exception in the case of a proceeding purely upon the common counts, where the pleadings are so general as not to give certainty to the matter decided. How much more will this be true when, as in a case of the State Board of Equalization, there are no pleadings whatever.

The facts of the issue of the peremptory mandamus, of the application on the 18th for time, of the denial thereof, and of the delivery of the opinion *quasi in furore* by the commanding judge that it must be obeyed literally and forthwith,—are "open and tangible facts,"—and of their effect there could be no reasonable doubt. In this coerced assessment the Board were not free agents. They did not exercise their judgment.

The other criticisms of the evidence contained in appellant's brief (pp. 28-31), are equally untenable. They consist of quibbles over the questions whether the reports of the Board of Railroad and Warehouse Commissioners, and of the Board of Agriculture of the State, were public records; and in addition thereto whether all the contents thereof were within the personal knowledge of the members of the Board; and of discussions of the sources of information of the different witnesses who testified to facts affecting the market values of property. The authorities already cited are sufficient to dispose of these contentions.

The contention, third, that appellee ought to have paid in the $33,000 and then brought suit at law to get it back, is controverted by the long list of injunction cases which we have heretofore cited, in which the courts sustained injunctions upon equitable terms. No useful purpose could be subserved by analyzing at great length the multitude of citations of irrelevant cases presented by the brief of appellants.

We have seen that there was no sufficient ground for attacking the decree in this case;—that the court had jurisdiction of the bill;—that the new assessment by the new Board elected in 1900 to make assessments for the next four years, made in 1901 to re-assess appellee's capital stock as of April 1, 1900, after appellee had been regularly assessed and taxed and had paid the taxes for the year 1900, was made under the coercive influence of a mandamus to which appellee was not a party; that it was not due process of law; that it did deny to appellee the equal

protection of the laws, and that it resulted in a grossly and fraudulently excessive double tax of appellee's capital stock for the year 1900. The court below found all these facts well proved by competent evidence.

We therefore submit that the decree of the court below should be affirmed.

Respectfully submitted.

JOHN S. MILLER,
MERRITT STARR,
Attorneys for Appellee.

CHICAGO, April 5, 1907.

(20,393.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1906.

No. 428.

SAMUEL B. RAYMOND, COUNTY TREASURER OF COOK COUNTY, ILLINOIS, AND *EX OFFICIO* COUNTY COLLECTOR OF COOK COUNTY, ILLINOIS; JOHN J. HANBERG, HIS SUCCESSOR AS SUCH COUNTY TREASURER AND COUNTY COLLECTOR, ET AL., APPELLANTS,

vs.

THE PEOPLES GAS LIGHT AND COKE COMPANY.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS.

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1 In the Circuit Court of the United States for the Northern District of Illinois, Eastern Division.

26168.

THE PEOPLES GAS LIGHT & COKE COMPANY
vs.
SAMUEL B. RAYMOND ET AL.

Mr. Nathaniel C. Sears, Mr. James F. Meagher, Mr. Edward S. Whitney, Solicitors for Complainant.
Mr. James Hamilton Lewis, Mr. Harry A. Lewis, Mr. William F. Struckman, Mr. David K. Tone, Solicitors for Defendants.

2 Pleas in the Circuit Court of the United States for the Northern District of Illinois—Eastern Division, in Chancery sitting at the United States Court room, in the City of Chicago, in said District and Division, before the Honorable Peter S. Grosscup, Circuit Judge of the United States for the Seventh Judicial Circuit, on Wednesday, the twenty-fifth day of July, being one of the days of the regular July term of said Court, in the year of our Lord one thousand nine hundred and six and of our independence the one hundred and thirty first year.

MARSHALL E. SAMPSELL, *Clerk.*

3 In the Circuit Court of the United States for the Northern District of Illinois.

26168.

THE PEOPLES GAS LIGHT & COKE COMPANY
vs.
MAURICE FITZGERALD and SAMUEL B. RAYMOND.

Be it remembered that on this day to-wit: the fourteenth day of February, 1902, come the complainant in the above entitled cause by its solicitors, Messrs. Meagher and Whitney and filed in the clerk's office of said Court its certain Bill of Complaint in words and figures following to-wit:

4 In the Circuit Court of the United States for the Northern District of Illinois, Northern Division.

26168.

THE PEOPLES GAS LIGHT & COKE COMPANY
vs.
MAURICE FITZGERALD and SAMUEL B. RAYMOND.

Bill for Injunction.

Meagher & Whitney, Solicitors and of Counsel.

4½ UNITED STATES OF AMERICA,
Northern District of Illinois, Northern Division.

In the Circuit Court Thereof.

THE PEOPLES GAS LIGHT & COKE COMPANY
vs.
MAURICE FITZGERALD and SAMUEL B. RAYMOND.

To the Honorable the Judges of the Circuit Court of the United States for the Northern District of Illinois, Northern Division, in chancery sitting:

1. Humbly complaining showeth unto your Honors your orator, The Peoples Gas Light & Coke Company, that it is a corporation organized and existing under and by virtue of the laws of the state of Illinois, and that it is and has been engaged in the manufacture, sale and distribution of gas in the city of Chicago for many years last past; that its principal place of business is in the city of Chicago; that it is a citizen of the state of Illinois, and a resident and an inhabitant of the Northern Division of the Northern District of said state, and brings this its bill against Maurice Fitzgerald, Town Collector of the Town of South Chicago (commonly, and sometimes hereinafter, called the "South Town"), in the city of Chicago, county of Cook and state of Illinois, and against Samuel B. Raymond,
5 County Treasurer of Cook County, and *ex officio* the collector of taxes for said county of Cook, both of said defendants being citizens and residents of the Northern Division of the Northern District of the state of Illinois.

And thereupon your orator complains and states as follows:

First. That the Peoples Gas Light & Coke Company was organized as a corporation to do business in said state, under and by virtue of a special statute of the state of Illinois, approved February 12, 1855, entitled, "An Act to incorporate The Peoples Gas Light & Coke Company," as amended by an act entitled, "An Act to amend An Act entitled, 'An Act to incorporate The Peoples Gas Light & Coke Company,' approved February 12, 1855," which said amendatory act was approved February 7, 1865.

Second. The defendant, Maurice Fitzgerald, is Town Collector of said Town of South Chicago, duly elected by the voters of said town, and as such town collector, is charged by law with the duty of collecting from the several persons named in the town collector's books, when delivered to him by the county clerk of said county, the several sums of personal property taxes therein extended opposite the respective names of such persons. In case any person or corporation named in said books shall neglect or refuse to pay personal property taxes, extended against him in said books, said defendant is authorized and required by law to collect such taxes by distress and sale of goods and chattels of such person or corporation.

The defendant, Samuel B. Raymond, is County Treasurer of said county duly elected by the voters of said county, and is also *ex officio* county collector of said county. At some time between the 10th and 31st days of March, 1902, the defendant, Maurice Fitzgerald, as such town collector, will be required by law to return to the defendant,
Samuel B. Raymond, as such county collector, the tax books
6 for 1901, heretofore received by said town collector from said
county clerk, and to make final settlement for the amount of taxes placed in his hands for collection. If it shall then appear from said tax books so returned that any person or corporation mentioned therein shall have failed to pay the personal property taxes extended against such person or corporation, said defendant, Samuel B. Raymond, as such county collector, is then charged by law with the same duties, and may proceed in the same manner for the collection of such personal property taxes as is provided in the case of town collectors, and is required to collect the same by distress and sale, if necessary.

Third. Your orator further shows that shortly after its incorporation it proceeded to act and did act upon the privileges and powers granted to and conferred upon it by said acts of incorporation aforesaid, and did proceed to construct gas works in the city of Chicago, and did, by and with the consent of the city of Chicago, proceed to lay mains for the delivery of gas to consumers thereof in the city of Chicago, and from and after its incorporation as aforesaid, complainant did continuously thence hitherto remain in and is now engaged in the business of manufacturing, selling and distributing gas to the residents of said city of Chicago, consumers of such gas.

Fourth. Your orator further shows unto your Honors that prior to and on April 1, 1900, the outstanding capital stock of complainant amounted to the sum of $28,668,800, divided into 286,688 shares of the par value of $100 each; that the outstanding bonded indebtedness on the property then owned by complainant amounted to the sum of $34,496,000, and that complainant had no other indebtedness, save current indebtedness for material and supplies used by it in conducting its operation, and for wages of its officers, employés, etc. That the real estate owned by your orator is also situated in the county of Cook and state of Illinois, and was all
7 assessed by the Board of Assessors and Board of Review of
Cook County in the year 1900, in like manner and upon the same basis as other real estate situated in the said town in the said county of Cook.

Fifth. Your orator further shows unto your Honors that by article IX of the constitution of the state of Illinois it is provided, in relation to the taxation of property in the state of Illinois, as follows:

"The general assembly shall provide such revenue as may be needful by levying a tax, by valuation, so that every person and corporation shall pay a tax in proportion to the value of his, her or its property—such value to be ascertained by some person or persons, to be elected or appointed in such manner as the general assembly shall direct, and not otherwise."

Your orator further shows that by the statutes of the state of Illinois, all property except that to be assessed by the State Board of Equalization, as hereinafter mentioned, is to be assessed by the local assessors in each county in the state provided for by said statutes, and it is made the duty of said local assessors to value personal property at its fair cash value, less such deductions as may be allowed by law to be made for credits, which values shall be set down in one column, to be headed "Full value," and one-fifth part thereof shall be ascertained and set down in another column, which shall be headed "Assessed value." Real property shall be valued at its fair cash value, estimated at the price it would bring at a fair voluntary sale in due course of trade, which shall be set down in one column, to be headed "Full value," and one-fifth part thereof shall be set down in another column, which shall be headed "Assessed value," and the one-fifth part of all full values so ascertained and set down shall be assessed value for all purposes of taxation.

Sixth. Your orator further shows unto your Honors that the laws of the state of Illinois governing the assessment of property in
8 the state of Illinois provide for a Board known and called the State Board of Equalization, which said State Board of Equalization is vested with the power, and charged with the duty, to review and equalize the assessments made by the local assessors of the state of Illinois upon property throughout the state of Illinois assessed by said local assessors; and said State Board of Equalization is required to assess the capital stock of each company or association incorporated under the laws of the state of Illinois, and to assess the railroad property denominated in the revenue laws as "Railroad track" and "Rolling stock," the assessment of the capital stock of corporations, and of railroad track and rolling stock being committed exclusively to the said State Board of Equalization; and in valuing property, the assessment of which is committed to said State Board of Equalization, said Board is required to observe the same formula with respect to "Full value" and "Assessed value" imposed upon the local assessors in respect to property assessed by said local assessors; and it is made the duty of the secretary of said Board, under the direction of the auditor of public accounts of the state of Illinois, to compile the abstracts of assessments received from the county clerks into tabular statements convenient for the use of the Board, which statements and the original abstracts shall be submitted to the Board on the first day of its session in each year; that said Board shall assemble at the state capitol on the second Tuesday in the month of August annually, and examine the abstracts of property assessed for taxation in the several counties of the state of Illinois as returned to the auditor, and shall equalize the assessments

in the manner provided in said act. That said Board, in equalizing the valuation of property as listed and assessed in the different counties, shall consider the following classes of property separately, viz.: personal property; railroad and telegraph property; lands, and town and city lots; and, upon such consideration, determine
9 such rates of addition to or deduction from the listed or assessed valuation of each of said classes of property in each county, or to or from the aggregate assessed value of each of said classes in the state, as may be deemed by the Board to be equitable and just—such rates being in all cases even and not fractional; and such rates, as finally determined by said Board, shall not be combined. That in equalizing the value of personal property between the several counties, said Board shall cause to be obtained the state averages of the several kinds of enumerated property, from the aggregate footings of the number and value of each; and the value of the several kinds of enumerated property in each county shall be obtained at those average values; and the value of enumerated property thus obtained, as compared with the assessed value of such property in each county, shall be taken by said Board to obtain a rate per cent. to be added to or deducted from the total assessed value of personal property in each county: provided, that whenever in the opinion of the Board it is necessary, to a more just and equitable equalization of personal property, that a rate per cent. be added to or deducted from the value thus obtained in any one or more of the counties, said Board shall have the right so to do; but the rate per cent. hereinbefore required shall first be obtained to form the basis upon which the equalization of personal property shall be made. That when said Board shall have separately considered the several classes of property as by said statute is required, the results shall be combined into one table, and the same shall be examined, compared and perfected in such manner as said Board shall deem best to accomplish a just equalization of assessments throughout the state, preserving, however, the principle of separate rates for each class of property. That when said Board shall have completed its equalization of assessments, for any year, the chairman and secretary shall certify to the auditor the rates finally determined
10 by said Board to be added to or deducted from the listed or assessed valuation of each class of property in the several counties, and also the amounts assessed by said Board; and it is made the duty of the auditor, under his seal of office, to report the action of the Board to the several county clerks, immediately after the adjournment of said Board, and that a report of the proceedings of such Board shall be published annually in pamphlet form. And it is further provided by law that all rates for taxes shall be extended by the county clerk on the assessed valuation of property, as equalized and assessed by said State Board of Equalization.

Seventh. Your orator further shows unto your Honors that in compliance with the obligations imposed upon it by the statutes of the state of Illinois regulating the assessment of property for taxation, your orator, within the time and in the manner required by law, duly listed for taxation all of its pipes, mains and plants, all of its material and supplies on hand, all cash in bank and in the

possession of complainant, and all and singular all the real and personal property of every kind, name and nature belonging to it, and delivered to the board of assessors of Cook county the said list, and also prepared and filed a sworn statement or schedule, as required by law, of its capital stock, and filed said capital stock schedule with the said State Board of Equalization; a copy of which capital stock schedule, so as aforesaid filed with said State Board of Equalization, will be produced on the hearing of this cause. The assessment made by the board of assessors of Cook county for the year 1900 upon all the property owned by your orator on April 1, 1900, was the sum of ——, and the assessment finally certified by the Board of Review of the County of Cook, a body of duly elected officials of said county authorized by law to reduce or increase the real and personal property assessments of persons and corporations owning property in said county, was the sum of ——.

11 *Eighth.* Your orator further shows unto your Honors that by a law of the state of Illinois, said State Board of Equalization has power to adopt such rules and principles to ascertain the fair cash value of the capital stock of corporations as to said Board may seem equitable and just, and when so adopted such rules and principles have the same force and effect as a statute of the state of Illinois; that at its session for the year 1900 said State Board of Equalization adopted certain rules governing the assessment of the capital stock of corporations in the words and figures following:

"*Resolved*, That for the purpose of ascertaining the fair cash value of the capital stock, including the franchise, of all companies and associations now or hereafter created under the laws of this state, and for the assessment of the same, or so much thereof as may be found to be in excess of the assessed or equalized value of the tangible property of such companies and associations respectively, we, the State Board of Equalization, hereby adopt the following rules and principles, viz.:

First. The capital stock of each said company or association shall be valued as an entirety, due consideration being given to the following propositions:

a. To the character and duration of the franchise of said company or association.

b. To the amount of the contribution (if any) demanded of and paid by said company or association under the provisions of any contract or ordinance, to any municipality, as compensation for the use of its franchise privileges in said municipality.

c. The highest and lowest quotations of the shares of stock of said company or association during the twelve months immediately preceding the dates of assessment, and the number of shares of stock sold at such quotations.

d. Any other fact or condition or circumstance that will assist in arriving at a just and equitable fair cash value of said capital stock.

Second. From the aggregate amount ascertained as aforesaid, there shall be deducted the aggregate amount of the equalized or assessed valuation of all tangible property, respectively, of such companies and associations, wherever the same may be located (such

12 equalized or assessed valuation of its Illinois property being taken, in each case, as the same may be determined by the

equalization or assessment of property by this board), and the amount remaining, in each case, if any, shall be taken and held to be the amount and fair cash value of the capital stock, including the franchise, which this Board is required by law to assess, respectively, against companies and associations now or hereafter created under the laws of this state.

Third. The above and foregoing are declared to be the only existing rules and principles adopted by this Board for its government in the assessment of the capital stock of companies or associations."

Ninth. Your orator further shows unto your Honors that at the regular annual session of said State Board of Equalization, held at Springfield at the time appointed by law for the year 1900, (and which convened on or about September 11, 1900) in order to review and equalize the assessments made by the local assessors in the state of Illinois for the year 1900, and for the purpose of making the primary assessments of capital stock and franchise, and of "railroad property" and "rolling stock," the abstracts of all the assessments made by the local assessors throughout the State of Illinois for said year 1900, as well as the schedules of property and capital stock listed and filed by complainant as aforesaid, together with similar schedules of divers other corporations, were laid before the said State Board of Equalization by the auditor of public accounts, pursuant to the statute in such case made and provided, to enable the said State Board of Equalization to discharge its statutory duty and review and equalize the assessments made by the local assessors throughout the state, and to determine, adjudge and fix as an original assessment the valuations and assessments to be placed upon the capital stock including the franchise of corporations organized and existing under and by virtue of the laws of the state of Illinois. At said meeting said State Board of Equalization ascertained and determined that in order to bring the assessed value of personal property and
13 of the city lots in Cook county to the state average, as required by law, an addition of 10 per cent. should be made to the assessed value of the personal property, and to the city lots in said county, as fixed by said Board of Review of Cook County, and such addition was accordingly made by said State Board, and was in due course certified to the County Clerk of said county. As a result of such increase by said State Board, the basis and standard of assessment throughout said state was judged and determined by said State Board to be made uniform, and as a further result the total valuation of all property owned by your orator on the first day of April, 1900, in said county, and there locally assessed, as determined by said Board of Review and so equalized by said State Board, was fixed for all purposes of taxation at the sum of $17,079,465; and the assessed value of said property was fixed at one-fifth thereof; being the sum of $3,415,893.

At said session of said State Board your orator also appeared by its counsel and gave information as to its property, its shares of capital stock, and evidence and information in respect thereto were also submitted by said Board of Assessors of Cook County, and by others. Upon consideration of the matter, said State Board determined and

fixed, at its regular open session, the full value of the capital stock, including the franchise, of your orator, at $19,329,465, and determined and made a new assessment upon the capital stock of your orator of $450,000, being an assessment for that amount in addition to the assessment hereinbefore mentioned, made upon the tangible property of your orator, which assessment fully appears in and by the official records showing the proceedings of said State Board.

Tenth. Your orator further shows unto your Honors that at its 1900 session, the said State Board of Equalization assessed the capital stock, including the franchise, of three hundred and thirty-four companies and associations, including your orator, incorporated under the laws of the state of Illinois, other than railway
14 companies; that, as shown by the report of said State Board of Equalization for the year 1900, the amount of the capital stock paid up, so far as the same was reported by said three hundred and thirty-four companies and associations, aggregates the sum of $236,067,920; that the "full value of the capital stock and franchises of said three hundred and thirty-four corporations and associations, as fixed and determined by the said State Board of Equalization, was the sum of $129,489,040; that the "assessed value" of the capital stock and franchises of said three hundred and thirty-four corporations and associations, as fixed by the said State Board of Equalization, being one-fifth of said "full value," was the sum of $25,897,808, and that the equalized value of the tangible property of said three hundred and thirty-four corporations and associations, assessed by the local assessors, deducted from said "assessed value" of the capital stock and franchises fixed by the said State Board of Equalization, as required by section 3 of the revenue act of the state of Illinois, was the sum of $21,089,178, and that the net assessment of capital stock and franchises of said three hundred and thirty-four corporations and associations, being the excess of the same over the equalized value of the tangible property of said three hundred and thirty four corporations and associations, assessed by the local assessors throughout the state of Illinois, was the sum of $4,808,630.

And your orator further shows that at its 1900 session said State Board of Equalization also considered and passed upon one hundred and twelve railroad companies operating lines of steam railroad in the state of Illinois, and found and determined that the total assessed value of main track, second main track, side or turn-out track and rolling stock, being all of the tangible property of said one hundred and twelve railroad companies was the sum of $77,878,672, and that the assessment of the tangible property of said one hundred and twelve steam railroad companies left nothing to be as-
15 sessed as capital stock of said railroad companies.

And your orator charges the fact to be that the assessment made by said State Board of Equalization for the year 1900, on said three hundred and thirty-four corporations and associations aforesaid, and upon said one hundred and twelve steam railroad companies, was certified by said State Board of Equalization to the auditor of public accounts of the state of Illinois, and by the last

named official to the county clerks of the various counties in said state of Illinois, and by the said county clerks extended upon the tax warrants, and the taxes upon said assessments paid in substantially every case.

Eleventh. Your orator further shows unto your Honors that the "full value" of capital stock and franchise of said three hundred and thirty-four corporations and associations, as ascertained, fixed and determined by said State Board of Equalization, was about 55 per cent. of the amount of capital stock actually paid up, as reported to said State Board by said corporations as aforesaid.

That in the year 1900 there were returned by the local assessors 1,209,446 horses in the state of Illinois, worth $10,964,608, or an average of $9.06 per animal. In the same year there were returned by the local assessors 2,438,275 head of cattle, worth $12,004,857, or an average of $4.92 per head; and in the same year there were returned by the local assessors 2,690,367 hogs, assessed at the sum of $2,885,123, or an average of $1.07 each; but your orator believes and charges that, assuming the figures above given as the assessments made by the local assessors of live stock were but one-fifth of the "full value" thereof, nevertheless said assessments thus made by the local assessors were intentionally and deliberately thus made by said local assessors for the purpose of
16 undervaluing said horses, cattle and hogs, and thereby relieving the owners thereof from bearing their just proportion of the public burden, and that the assessments thus deliberately and intentionally made constitute, in view of the facts set out in this your orator's bill of complaint, a fraud in law upon your orator; and in this connection your orator shows unto your Honors, and states the fact to be, that in the year 1900 there were sold at the Union Stock Yards, a large general market in the City of Chicago for the sale of live stock of all descriptions, 99,010 horses for $11,485,160 in cash, or an average of $116; whereas, the "full value" placed upon horses by the local assessors throughout the state of Illinois in said year 1900 was but the sum of $45.30, or, substantially, 39 per cent. of the value brought by horses sold in the open market in the City of Chicago during said year. In the same way 2,729,046 head of cattle were sold at the Union Stock Yards during said year for the sum of $136,452,300 in cash, or an average of $50 per animal; on which your orator charges that the "full value" of the said cattle returned by the local assessors throughout the state of Illinois was but 49 per cent. of the fair cash value thereof, as shown by actual sales thereof for cash in the same year; and in the same year there were sold at the Union Stock Yards 8,109,064 hogs, for $96,092,408, or an average of $11.84; wherefore, your orator charges that the "full value" of the hogs returned by the local assessors throughout the state was but 44 per cent. of the fair cash value of said hogs, as shown by sales thereof made in the open market for cash, in the same year for which said assessments were made by said local assessors. And your orator further shows unto your Honors that the live stock sold at the Union Stock Yards comprises all kinds and grades of cattle, hogs, and horses;

that the live stock there sold comes from all over the west as far as
Wyoming, and southwest, as far as Texas, and that the
17 average values realized on said live stock is not to be understood as values realized from the best grades of the specific kind of live stock sold, but that said averages cover the best live stock sold as well as that less desirable or valuable, and that the average values realized are therefore a fair average of the whole volume sold in that market.

Twelfth. Your orator further shows unto your Honors that the laws of the state of Illinois provide for a department of agriculture, styled, "The State Board of Agriculture," consisting of a president and one vice-president from each congressional district in the state of Illinois, and of the last ex-president of the said State Board of Agriculture, to be elected in the manner provided in and by said statute; that said Board shall keep an office for the transaction of business in the State House at Springfield, which Board shall have the sole control of the affairs of the department of agriculture, and of all state fairs and fat stock shows, with power to make such by-laws, rules and regulations in relation to the department of agriculture, and the management of the business of such department, as a majority of said Board shall from time to time determine, and which Board is required to make and deliver to the governor of the state of Illinois a report of their acts and doings; and by said statute it is also made the duty of the secretary of said State Board of Agriculture to prepare and deliver to the auditor, on or before the first day of April in each year, forms of blanks and schedules similar to those used in the assessment and return of property, and it is made the duty of the county clerk of each of the several counties to provide schedules and blanks according to the form provided by the auditor for the use of assessors, and it is made the duty of the assessors or deputy assessors, in the same manner and at the same time as is or may be provided by law for the assessment of property, to cause such census schedules to be filled by all persons within their respective assessment districts
in possession of property concerning which information is
18 required by said act, and the statistics regarding said property are to be collected by said assessors; and it is made the duty of the county clerk to revise, correct, tabulate and foot up the statistical returns made to him by the assessors or deputy assessors, and to transmit to the state auditor, with his return of the assessment of the county, an abstract of the agricultural statistics of the county, in the form required by the schedule and blanks furnished by the auditor; and it is made the duty of the auditor to transfer such abstracts to the secretary of the State Board of Agriculture, who shall revise, correct and compile the same and publish the results in the annual report of the transactions of the said State Board of Agriculture for the year or years in which the statistics were collected.

Your orator further shows that pursuant to such statute the Illinois State Board of Agriculture made a statistical report for the year 1900, in which were contained statistics showing, among other

things, that during said yea 83 per cent. of the number of hogs assessed by the local assessors were actually sold and marketed; that the number thus sold was 2,348,855, and the average live weight thereof was 225 pounds per animal, and the average price received was $4.35 per hundred, or an average of $9.78 per animal. In other words, that while 2,829,900 hogs were returned by the local assessors of the state of Illinois, and assessed at $3,028,057, or an average "full value" of $5.35 per animal, 83 per cent. of the entire number so returned for assessment purposes were sold in the open market during said year, and being 2,348,855 hogs, for the sum of $23,066,408, or an average "full value" of $9.78 per animal, thus demonstrating that said hogs were by the local asses-ors throughout the state of Illinois systematically and intentionally undervalued by 45 per cent. Said report likewise made the showing that while 2,009,598 cattle were returned by the local assessors and assessed at $9,887,222, an
19 average "full value" of $24.60 per animal, 462,197 of said cattle were actually sold for $22,089,527 in cash, or an average "full value" of $47.79 per animal. In other words, that 23 per cent. of the total number of cattle assessed by the local assessors were sold for approximately two and a half times as much as the assessed value of all the cattle in the state as fixed and determined by the local assessors, on which your orator charges that the local assessors throughout the State of Illinois, for said year intentionally undervalued, by 49 per cent. the cattle in the said state.

Thirteenth. Your orator further states that the assessed value of all the taxable property in the state of Illinois for the year 1899 was $953,099,468, and that the aggregate equalized assessed value of all property in Cook county, in the state of Illinois, for the year 1899, was $381,548,581; that the aggregate equalized assessed value of all the taxable property in the state of Illinois for the year 1900 was $809,733,405; that the aggregate of the equalized assessed value of all property in the county of Cook for the year 1900 was $306,-957,900; that the aggregate equalized assessed value of all the taxable property in the state of Illinois for the year 1901 was $991,-231,829; that the aggregate of the equalized assessed value of all taxable property in the county of Cook for the year 1901 was $408,-189,960; that the aggregate assessment of all the taxable property in Cook county, as made by the local assessors for the year 1899, was $378,828,291; that the aggregate of the assessed value of all the taxable property in Cook county, as assessed by the local assessing bodies for the year 1900, was $260,564,522, being a reduction or decrease in the assessment made by the local assessing bodies in Cook County of over $118,000,000, or more than 31 per cent.; that the total assessed value by the local assessing authorities of all the taxable property assessed by them in Cook County for the year 1901 was $365,191,279; that the equalized value of "railroad
20 track," "rolling stock" and improvements on right of way in Cook county assessed by the State Board of Equalization for the year 1900 was the sum of $16,619,925, and the equalized value of the capital stock of corporations, other than railroads, for said year was the sum of $3,717,000 before making the assessment

on the capital stock and franchise of your orator hereinafter described; but your orator charges the fact to be that said equalized value of property assessed by the local assessors of Cook county, as above given, and the equalized value of "railroad track," "rolling stock" and capital stock, except the assessment made upon your orator as hereinafter mentioned, made by the State Board of Equalization, was not as much as one-fifth of its "full value"; but on the contrary, your orator charges that said equalized value of $365,191,279 was not to exceed one-fifth of sixty per cent. of the full value of said property, and that said equalized value of $16,619,925 on "railroad track," "rolling stock" and "improvements on right of way" was not as much as one-fith of fifty per cent. of the full value thereof.

Your orator further shows unto your Honors that in the state of Illinois there are a large number of gas companies other than your orator engaged in furnishing and supplying gas to residents and consumers thereof in cities, villages and towns in said state; that the aggregate amount of paid up capital stock of said corporations, as your orator is informed and believes, is the sum of $15,922,280; that the total bonded indebtedness of said corporations is the sum of $4,782,235; that the assessment of the capital stock and franchises of said corporations is committed by law exclusively to the said State Board of Equalization, and that said State Board of Equalization made an assessment upon the capital stock of said corporations for the year 1900.

And your orator sets out a statement of the corporations engaged in manufacturing and distributing gas throughout the state
21 of Illinois, the amount of the capital stock of said corporations, the bonded indebtedness of the same, and the amount of the assessment placed against the capital stock of said corporations by said State Board of Equalization for the year 1900:

22 Statement showing the capital stock and outstanding bonded indebtedness of gas companies in Illinois, other than the People's Gas Light and Coke Company, together with the equalized value of the tangible property, and the "full value" of the capital stock and franchises of such companies as fixed by the state board of equalization for purposes of taxation in the year 1900.

	Capital stock.	Bonds.	Equalized value of tangible property.	Full value of capital stock and franchises as fixed by board.
Alton Ry. Gas & Electric Co.	$500,000	$450,000	$39,276	$201,380
Aurora Gas Light Co.	300,000	230,000	.....	25,000
Belleville Gas Light & Coke Co.	150,000	50,000	21,264	150,000
Belvidere Gas Light & Fuel Co.	50,000	17,000		
Union Gas & Electric Co. (Bloomington).	400,000	.....	7,793	163,965
Cairo City Gas Co.	100,000	.....	6,685	50,000
People's Gas & Electric Light Co. (Canton)	50,000			
Centralia Light & Power Co.	47,000	.....	5,100	30,500
Urbana & Champaign Gas & Electric Co. (Champaign).	500,000	435	25,045	250,000
Clinton Gas Co. (new Company)	50,000			

Statement showing the capital stock, etc.—Continued.

	Capital stock.	Bonds.	Equalized value of tangible property.	Full value of capital stock and franchises as fixed by board.
Danville St. Ry. & Light Co	$700,000	$525,000	$85,000	$425,000
Decatur Gas & Electric Co	400,000	372,000	35,481	250,000
Dixon Power & Lighting Co	100,000	38,500	.....	12,500
Du Quoin Light, Heat & Power Co	50,000	40,000	8,021	45,105
Elgin American Gas Co	100,000	305,000	.....	20,000
Northwestern Gas Light & Fuel Co. (Evanston)	2,000,000	.....	.....	25,000
Freeport Light & Fuel Co	100,000	36,000	5,563	57,815
Galena Gas Light Co	63,000			
Galesburg Gas & Electric Light Co	350,000	350,000	21,199	155,995
Galva Gas Light & Coke Co	30,000			
23 Jacksonville Gas Light & Coke Co	200,000	33,500	19,307	101,535
Joliet Gas Light Co	300,000	285,000	27,744	188,720
Citizens' Gas Co. (Kankakee)	150,000			
Kewanee Light & Power Co	100,000	80,000	6,315	56,575
La Grange Gas Co. (New Company)	100,000			
Peru-La Salle Gas Light & Power Co. (La Salle)	130,000	100,000		
Lincoln Gas Co	100,000	85,000	4,800	90,000
Litchfield Light, Heat & Power Co	50,000	35,000	263	6,315
Macomb Electric Light & Gas Co	50,000			
Mattoon Gas Light & Coke Co	50,000	50,000	.....	12,500
Mendota Light & Heat Co	25,000	8,800	.....	5,000
People's Power Co. (Moline)	300,000	290,000	17,923	115,000
Monmouth Gas Co	30,000	20,000	8,500	42,500
Morris Gas Co	40,000	20,000	1,496	12,480
Murphysboro Water Works, Electric & Gas Light Co	80,000	80,000	10,817	56,585
Ottawa Gas Light & Coke Co	100,000	.....	3,822	24,110
Paris Gas Light & Coke Co	50,000	.....	.....	10,000
Pekin Light, Heat & Power Co	100,000	100,000	7,734	63,670
People's Gas & Electric Co. (Peoria)	500,000	.....	37,422	212,110
Peoria Gas Light & Coke Co	300,000	.....	47,200	236,000
Quincy Gas & Electric Co	600,000	600,000	31,255	300,000
Rockford Gas Light & Coke Co	300,000	485,000	16,754	125,000
Springfield Gas Light Co	75,000	.....	27,264	136,320
Sterling Gas & Electric Light Co	40,000	36,000	5,560	27,800
Streator Gas & Light Co	100,000	60,000	.....	15,000
Citizens' Gas Light & Fuel Co. (Taylorville)	12,280	.....	553	10,000
North Shore Gas Co. (Waukegan)	1,000,000			
Ogden Gas Co. (Chicago)	5,000,000	.....	37,826	239,130
	$15,922,280	$4,782,235	$572,982	$3,948,610

24 Your orator therefore charges that the local assessors of counties throughout the state of Illinois intentionally, systematically and deliberately undervalued property assessed by them, and valued and assessed the "full value" of property generally in the state of Illinois for the year 1900 at not to exceed sixty per cent. of its fair cash vaue, and put down as the "full value of said property a valuation and assessment not to exceed sixty per cent. of the fair cash value of said property throughout the state of Illinois.

And your orator charges the fact to be that said local assessors so

undervalued and assessed property throughout the state in pursuance of a settled plan and policy to undervalue said property and thereby relieve the owners thereof from bearing their just proportion of the public burden.

And your orator further shows unto your Honors that the facts in this its bill of complaint contained, as to the valuations placed by the local assessors and by the State Board of Equalization upon property throughout the state of Illinois, and as tending to show the rate at which property was valued by said local assessors and by said State Board of Equalization, were by your orator, and by certain other corporations doing business in the city of Chicago, and against whom discriminating assessments were made similar to that made against your orator as hereinafter described, all placed before the said State Board of Equalization, in the form of printed statements of fact, under oath.

Fourteenth. Your orator further shows unto your Honors that the spirit and intent of the fundamental law of the state of Illinois is that every person and corporation shall pay a tax in proportion to the value of the property of such person or corporation, and the true interpretation and construction of the constitution and laws of the state of Illinois is that assessments upon property shall be so made by the taxing officials of the state of Illinois as to secure an
24½ equal and uniform assessment of all taxable property throughout the state in proportion to its value; and your orator charges that, in the assessments of property made by the local assessors throughout the state of Illinois, which assessments were subsequently by the State Board of Equalization reviewed and equalized, and in the assessment of property made by the State Board of Equalization, property throughout the state of Illinois was not assessed at the "full value" thereof for the year 1900, by the local assessors and by said State Board of Equalization, at to exceed sixty per cent. of the fair cash value thereof, except in the cases of the assessment of the capital stock of your orator, and of a few other corporations, as hereinafter described.

Your orator further shows that the aforesaid net assessment of capital stock and franchises, made against your orator, after being duly recorded in the official proceedings of said State Board of Equalization, was duly certified by said Board to the auditor of public accounts of the state of Illinois, and by said auditor of public accounts certified to the county clerk of Cook county, and said net assessment of the capital stock and franchise of your orator, and the tax thereon, duly extended by the county clerk of Cook county upon the tax warrant of said Cook county for the year 1900; and your orator further shows that thereafter, and on the 15th day of January, 1901, your orator paid to the county treasurer of Cook county the sum of $37,651.50, being the total amount of the tax upon said assessment on the capital stock and franchise of your orator, and likewise paid the further sum of $219,495.37, being the total amount of taxes levied, assessed and imposed upon the property of your orator of every kind, name, nature, character and description, real, personal and mixed, and upon such payment your orator received a receipt

and acquitance of all state, city, county, road, school and other taxes payable by it and due from your orator for the year 1900;
24¾ and of the amount thus paid by your orator, the sum of $82,585.21 was the tax on its real estate, the sum of $136,-910.16 was the tax upon its personal property, and the sum of $37,-651.50 was the tax upon its capital stock and franchise. And your orator submits unto your Honors, and will insist on the hearing of this cause, that the determination and judgment of said State Board of Equalization at its regular session for the year 1900, in determining and fixing the full net assessment of the capital stock and franchises of your orator at the sum of $450,000, was a final and conclusive adjudication that said sum of $450,000 was the assessed value of the capital stock and franchise of your orator over and above the equalized value of its tangible property for all purposes of taxation; and your orator charges that no part of said sum of $37,651.50 so paid by complainant to the county treasurer in full discharge of the tax for the year 1900 upon the capital stock and franchise of your orator, has ever been tendered back or refunded to complainant, but that said money has been paid over by the county treasurer, to the several state, city, county and town treasurers and other persons and corporations entitled to receive the same, and that said persons and corporations still retain the same.

Fifteenth. While said State Board was in session as aforesaid, and before any final action had been taken by said State Board to determine and fix the proper assessment to be made upon the capital stock, including the franchise, of your orator, for the purpose of taxation for the year 1900, a petition for mandamus was filed in the Circuit Court of Sangamon County, Illinois, on or about the 10th day of November, 1900, by the People of the State of Illinois at the relation of one Catherine Goggin, a resident of Cook county, and Robert C. Steele, a resident of Sangamon county, Illinois, against the individual members of the State Board, in which petition it was charged, among other things, that said State Board fraudulently intended to
25 adjourn its session without making any assessment upon the capital stock, including the franchise, of your orator, and of twenty-two other corporations doing business in said city of Chicago, and intended illegally to neglect and refuse to discharge the statutory duty obligatory upon it in that regard; and that said petition prayed that a writ of mandamus issue against the members of said State Board, commanding them to make an assessment for the year 1900 on the capital stock, including the franchise, of your orator, and of the other corporations therein mentioned. Neither your orator nor any of the said other corporations were made parties defendant to said petition, nor ever became parties thereto. An answer to said petition was filed by the said defendants therein on or about the 24th day of November, 1900, in which said defendants denied that they had refused or intended to refuse to discharge their duty as members of said State Board. Thereafter, as above set forth, said State Board assessed the capital stock, including the franchise of your orator. And afterwards, to-wit, on the 3rd day of December, 1900, said board adjourned *sine die*. On or about the 16th day of December,

1900, said mandamus proceeding was continued at the request of the petitioner therein, and no action whatever appears from the record of said case to have been thereafter taken in said case by either party, until about the 12th day of March, 1901. In the meantime, as aforesaid, your orator had paid the taxes extended upon its assessment upon the capital stock so made by the State Board of Equalization for the year 1900, in the belief that said assessment and the taxes levied thereon, were lawful and final, and in compl-ance with the requirements of the warrant issued to the Town Collector of the said Town of South Chicago, requiring him to collect said taxes from your orator. After said payment said mandamus case was tried on or about the first day of May, 1901. A final judgment was rendered by the said Circuit Court of Sangamon County in said cause,
26 directing a writ of mandamus to issue against the members of said State Board of Equalization, requiring the said State Board, and the members thereof, to convene forthwith at the capitol building in the County of Sangamon, and that they forthwith value and assess the capital stock, including the franchises, of each of the corporations mentioned in the petition filed in said cause, including your orator, as of April 1, 1900, "so as to ascertain and determine respectively as to each of said corporations, the fair cash value of its capital stock, including its franchises, over and above the assessed value of the tangible property of such company for the year 1900."

From the judgment so rendered an appeal was prayed by the defendants in said suit to the Supreme Court of Illinois. No evidence was introduced in said cause in said Circuit Court of Sangamon County by the defendants therein, in support of the merits of the assessment theretofore made on the capital stock, including the franchise, of your orator, for the year 1900, and no argument was made, either in said Circuit Court of Sangamon County or in said Supreme Court upon said appeal in support of the merits of the said assessment theretofore made upon the capital stock of your orator for the year 1900, the defense made to said petition for mandamus being rested, by the defendants therein, almost wholly on objections to jurisdiction, and other legal grounds, touching the power of the court to grant the relief prayed for.

On or about the 24th day of October, 1901, the Supreme Court of Illinois affirmed the judgment of said Circuit Court of Sangamon County hereinbefore mentioned, and on or about the 2nd day of November, 1901, a writ of mandamus was issued out of said Circuit Court of Sangamon County in said mandamus proceeding, and said writ was thereafter served upon said members of the State Board of Equalization. Said writ ordered a new capital stock assess-
27 ment against twenty of the corporations mentioned in said writ, including your orator, and the material portion of said writ was in the words and figures following, to-wit:

"Now, therefore, that justice may at once be done, you the said State Board of Equalization and the members thereof, and each of you are hereby commanded to convene at the Capitol Building in Sangamon County and State of Illinois, and there forthwith to value and assess the capital stock, including the franchises, of each of said

corporations and companies herein named, to-wit: Chicago City Railway Company, West Chicago Street Railroad Company, North Chicago Street Railroad Company, Chicago Union Traction Company, People's Gas Light and Coke Company, Chicago Telephone Company, Chicago Edison Company, Chicago Consolidated Traction Company, Chicago Electric Transit Company, Chicago and Jefferson Urban Transit Company, Cicero and Proviso Street Railway Company, Evanston Electric Railway Company, North Chicago Electric Railway Company, North Side Electric Street Railway Company, Ogden Street Railway Company, Chicago North Shore Street Railway Company, South Chicago City Railway Company, Chicago Passenger Railway Company, Chicago West Division Railway Company, North Chicago City Railway Company, as of the first day of April, A. D. 1900, in the manner provided by law, so as to ascertain and determine respectively as to each of said corporations, the fair cash value of its capital stock, including the franchise, over and above the assessed value of the tangible property of such corporation for the year 1900. And it is further ordered and commanded that in arriving at said valuations and assessments of the capital stock, including the franchises of the corporations herein named, the said State Board of Equalization and the members thereof, and each of them, shall, from the best information obtainable by it and them, and take into consideration, among other things, as to each such corporation, such as the same was on the first day of April, 1900, the market value, or if no market value, then the fair cash value of its shares of stock and the total amount of all its indebtedness, except the indebtedness for current expenses, excluding from such expenses the amount paid for the purchase or improvement of property and the assessed or equalized valuation of all tangible property of said corporations, respectively, on said April 1, 1900."

28 "And you are further commanded to direct the respective assessments so made to be certified by the Auditor of Public Accounts to the County Clerk of Cook County, that the taxes for all purposes thereon, may be extended by said clerk for the year 1900, and you are further commanded to make return to this court on the 22nd day of November, A. D. 1901, in what manner you have complied with this order."

Sixteenth. Thereafter the regular annual meeting of the State Board of Equalization for the year 1901 was convened at Springfield on the 10th day of December, 1901. By reason of an intervening election, prior to January 1, 1901, the membership of said Board had largely changed. Of the twenty-two members comprising said Board in 1900 only ten remained on said Board in 1901, and the remaining twelve members, constituting a majority of said board, were new members, who had taken no part in the assessment of the capital stock of corporations for 1900. While said Board was in session in 1901, said writ of mandamus under the said judgment of said Circuit Court of Sangamon County was duly served upon its members.

That on or about the 9th day of November, 1901, said Board of Equalization, by its counsel, who had represented it throughout

said mandamus suit, appeared in the Circuit Court of Sangamon County, and applied, on behalf of said Board, for an extension of time within which said Board might make its return to said mandamus writ. Said application was denied by said court, and in manner and in terms which were understood by many, if not all, of the members of said Board, and by said Board, as being menacing to the members of said Board, and as laying down specific instructions to them without leaving them any substantial discretion respecting the method and basis of making the new assessment commanded, and requiring them to assess the capital stock and franchise of your orator at its full cash value, and to make its assessment on said basis for the year 1900 without said Board taking into
29 account or consideration the rate of assessment of all taxable property in the State of Illinois, as equalized by the State Board of Equalization for the year 1900, and without attempting to equalize the asessment to be made by said Board in obedience to said writ upon the capital stock and franchise of your orator for the year 1900 with the assessments made upon the other taxable property in the State of Illinois for the year 1900, and without taking into account or making any deduction on account thereof, the said assessment of $450,000.00 made in the year 1900 by the State Board of Equalization upon the capital stock and franchise of your orator. Among other things the judge holding said Circuit Court of Sangamon County, in denying said application, made the following observations:

"The contention is made that the mode of procedure is new to the Board, and that it requires more time. There is no reason the court sees why they should have proceeded otherwise than as commanded in the writ. The law is the same to-night as it was a year ago, or two years ago, as far as taxation is concerned in the State of Illinois. There has just simply been a declaration by the highest tribunal of this State that property must be assessed according to the manner prescribed by law and the statute at its fair cash value.

"It is said further that the amount of work that they have had to do prevented them from devoting sufficient time to this. As the court views this case, no great amount of time is necessary for that Board to perform their duty. This court decided that what is ordered in the writ be done, and the Supreme Court affirmed that decision. The decision is explicit. There is no reason why any member of that Board should fail to understand exactly what his duty is. All this talk about complications, as to whether they should proceed on that line or this line, or consider this thing or that thing, this amount of per cent. or that amount of per cent. of valuations, is just so much matter to quibble about. This assessment could have been made before the application for the remanding order. It could have been made in a very short time after the writ issued. This is one of the things that they should do. This is one of the orders they should obey, because the time is fixed. They may put off
30 to some other time the assessment of other classes of property, the general assessment for this year, but the assessment of the particular property mentioned in that writ is fixed for a particu-

lar date. That is the time they should have addressed themselves to early in the session, if they wanted to comply with the order of the court and obey the law, and that work they must complete at the time fixed."

Thereafter, and on the 20th day of November, 1901, in supposed obedience to said writ of mandamus, said State Board made an assessment against the capital stock and franchise of your orator in the manner and in the figures shown as follows:

Amount of capital stock paid up, as reported by the company	$28,688,800.00
Full value of capital stock, including franchise, as fixed by the State Board of equalization	63,164,800.00
Assessed value of capital stock, including franchises, as fixed by the State Board of Equalization	12,632,960.00
Equalized value of tangible property assessed by local assessors, deducted under requirements of Section 3 of the Revenue Laws	3,415,893.00
Net assessment of capital stock, including the franchise, being excess of equalized value of capital stock and debt over equalized value of tangible property assessed by local assessors	9,217,067.00

Sixteenth. Your orator further shows that the tax on said assessment of $9,217,067.00 in January, 1902, was extended by the county clerk of Cook county and placed upon the tax warrant and is the sum of $725,183.17; that in addition to the tax so as aforesaid extended upon said assessment and placed upon said tax warrant and assessed against the property of your orator, the county clerk of Cook county also, without any warrant of law, added to said assessment, by way of alleged penalty, the sum of $36,259.06, making the total amount now claimed to be due from your orator for and
31 on account of the additional assessment so made for the State Board of Equalization in November, 1901, upon the capital stock and franchise of your orator, the sum of $761,442.23, and thereby a lien upon and against the property of your orator has been created and now exists, for the payment of said sum. And your orator charges on information and belief that in making said assessment of $9,217,067.00 said State Board of Equalization assessed the "full value" of the capital stock of your orator at par, in the sum of $28,668,800. To this amount said Board added the full amount of the outstanding bonded indebtedness of your orator, at par, amounting to the sum of $34,496,000. From one-fifth of the "full value" of its capital stock and bonded indebtedness thus ascertained, was deducted the equalized value of the tangible property of your orator, leaving the net assessment of capital stock and franchise, being the excess over the equalized value of the tangible property of your orator the sum of $9,217,067, as aforesaid. But your orator charges that said State Board of Equalization did not, in making said additional assessment on the capital stock and franchise of your orator, take into account, nor allow to your orator, any credit for and an

account of the assessment of capital stock and franchise originally, and in the year 1900, made by said State Board upon and against your orator, the tax upon which had then been paid by your orator, and also refused and neglected to equalize its assessment upon your orator's capital stock and franchise with the assessments made upon all other taxable property in the State of Illinois for the year 1900, although said Board and each member thereof well knew that the rate of valuation or assessment of all other property assessed and taxed in the State of Illinois for the year 1900, as equalized by the State Board of Equalization, did not exceed one-fifth of seventy per cent. of the cash value thereof, and probably not one-fifth of
32 sixty per cent. of the fair cash value thereof, and in making the said last assessment of your orator's capital stock and franchise for the year 1900, said Board and its members acted under the belief that said Board had no right under the writ issued by said Circuit Court of Sangamon County to take into consideration the rate of assessment in the State of Illinois on all other taxable property as finally equalized for the year 1900, but that said Board was limited in making an assessment, in pursuance of said writ, to the ascertainment of the full cash value of the capital stock and franchise of your orator on the first day of April, in the year 1900, and dividing the same by five and deducting from the result so reached the equalized assessed value of the tangible property of your orator for the year 1900, and taking the sum remaining as the amount which they were required to assess against your orator upon its capital stock and franchise for the year 1900 under the said order of said court.

And your orator further charges that said State Board of Equalization did not, for said year 1900 follow nor adopt, in the case of any other gas company in the State of Illinois, such method of ascertaining and determining the full "value" of the capital stock and franchise as was applied by said State Board to your orator, for said year, nor did it adopt such method in the case of any steam railroad company, nor of any other corporation or association in said state, except the Chicago Union Traction Company, the Chicago Consolidated Traction Company, the Chicago City Railway Company, the Chicago Telephone Company, and the Chicago Edison Company; neither did said State Board of Equalization nor the local assessors throughout the state of Illinois value or assess any other property in the state of Illinois on such or any similar ratio of value, but on the contrary valued and assessed property on the basis hereinbefore alleged.

33 *Eighteenth.* Your orator further shows unto your Honors that the Supreme Court of Illinois in the said *mandamus* case held that the rules adopted by said Board, in the year 1900, in the resolution hereinbefore set forth, were in conflict with the revenue statute in force in the State of Illinois, and were illegal and inoperative, and did not form any legal basis upon which the said Board could lawfully ascertain and determine the assessment upon the capital stock of corporations in the State of Illinois. That said board had not and did not adopt any other rules or principles for assessing the capital stock of corporations under and in pursuance of the pro-

visions of the statute above quoted prior to November 20, 1901, or prior to the making of the said second or new assessment upon the capital stock and franchise of your orator; that said State Board of Equalization on the 10th day of December, in the year 1901, adopted the following resolutions:

"Resolved, That for the purpose of ascertaining the fair cash value of the capital stock, including the franchise, of all companies or associations now or hereafter created under the laws of this state, and for the assessment of the same or so much thereof as may be found to be in excess of the equalized valuation of the tangible property of such companies and associations, respectively, we, the State Board of Equalization, hereby adopt the following rules and principles, viz:

"First. The fair cash value of the shares of capital stock (consideration being given among other things, to the value of the shares of stock and the quotations of such shares in the market over such a period of time as may be reasonable, also the books of said corporations and the returns made to the Auditor of Public Accounts, or such other information as the board may have or may be able to obtain) and the amount of the indebtedness, (except indebtedness for current expenses, excluding from such expenses the amount paid for the purchase or improvement of property) shall be combined or added together.

"Said State Board of Equalization shall then equalize said amount so obtained, so that said companies or associations shall be
34 assessed as near as practicable upon a uniform basis with other property throughout the state.

"Second. From the aggregate amount so determined and equalized as aforesaid, there shall be deducted the aggregate equalized valuation of all tangible property of such corporation or association, respectively, and one-fifth of the remainder, if any, shall be taken and held to be the assessed value of the capital stock of such corporation or association, including the franchise, over and above the tangible property thereof.

"Third. All heretofore existing rules of this Board for the assessment of capital stock, including the franchise of corporations are hereby repealed."

Nineteenth. Your orator further charges that the constitutional provision hereinabove set out requires that all property assessed for taxation in the State of Illinois, in any year, should be assessed upon the same basis or percentage of its actual value, and that said provision is applicable to the assessment of the capital stock and franchises of corporations under the General Revenue Law of the State of Illinois, so that by virtue of said constitutional provision, taken in connection with the revenue statute of the State of Illinois, it is the duty of the State Board of Equalization to assess all property, including the capital stock of corporations, which it is by law authorized to assess, at the same rate or percentage of its actual value as it shall find and determine that all other taxable property in the State of Illinois is assessed and taxed for the same year; that said State Board of Equalization is not given any power by the statute in equalizing the assessments made by the local assessing

bodies to raise the aggregate of such assessments in the State of Illinois more than one per cent., its function and duty being practically limited to the equalization of assessments leaving the aggregate of the assessments made by the local assessing bodies at the same amount as originally fixed, so that the basis of the assessment of property in the State of Illinois is fixed in each year by the
35 local assessing authorities, the function and duties of the State Board of Equalization being to equalize the said local assessments, and to make its original assessments of all property assessed by it in each year upon the same basis or percentage of actual value as all other property is assessed for such year in the State of Illinois, after such assessments are equalized by said State Board.

Your orator further states that the net assessment made by the said State Board of Equalization, under the writ hereinbefore mentioned, upon the capital stock and franchise of the several corporations mentioned in said writ, were as follows:

Chicago City Railway Company	$5,001,300
People's Gas Light and Coke Company	9,217,067
Chicago Telephone Company	775,266
Chicago Edison Company	1,800,761
South Chicago City Railway Company	433,886
Chicago Union Traction Company, Chicago Consolidated Traction Co. (and companies owning the lines leased by them)	15,505,177
Total	$32,733,457

and that the new capital stock assessments made against said corporations by said Board at the same session, after adopting the said rule under which it equalized its original assessments with the equalized assessment of all other taxable property in the State of Illinois, were as follows:

Chicago City Railway Company	$2,541,309
People's Gas Light and Coke Company	5,782,997
Chicago Telephone Company	574,974
Chicago Edison Company	737,789
South Chicago City Railway Company	120,000
Chicago Consolidated Traction Company, Chicago Union Traction Company and companies owning lines leased by them	6,786,091
Total	$16,543,160

36 Your orator further states that the assessments made by the State Board of Equalization in the year 1899, upon the capital stock and franchises of corporations did not materially differ or vary from the amount of the assessments made by said State Board upon the capital stock and franchises of the corporations in the year 1900, and that the variations above shown in the aggregate of the assessed valuations of the property in the State of Illinois,

and in the County of Cook for the years 1899 and 1900, did not to any material extent arise or grow out of any differences in the amounts of the assessments made by the State Board upon the capital stock and franchises of corporations.

Twentieth. Your orator further shows and states that the equalized assessed valuation of all the taxable property in the State of Illinois for the year 1899 did not equal one-fifth of the actual value of the property so assessed; that said assessment for the year 1899 was made by the local assessing bodies in view of the provision then contained in an amendment to the Revenue Act, limiting the aggregate rate of taxation, with certain exceptions, to five per cent. of the equalized assessed value of the taxable property, which provision of the statute so limiting the rate of taxation was adjudged and decided by the Supreme Court of Illinois to be unconstitutional, and void, and that after said discussion and in consideration thereof the local assessing bodies for the purposes of limiting the rate of taxation under the other limitations contained in the statute, reduced the assessed valuation made by them in the year 1900 of the taxable property for the year 1900, and that the Board of Review of the said County of Cook to that end, and for that reason in the year 1900, made the reduction in the assessed valuation of the taxable property in Cook County hereinbefore mentioned of the sum of $118,000,000. And your orator avers and charges the fact to be that the average equalized assessed value of taxable property in the State of Illinois for the year 1900 did not exceed one-fifth
37 of sixty per cent. of the cash value thereof, either in fact or in the opinion and judgment of the members of the said State Board of Equalization, and of the said Board, and that if said Board of Equalization had considered itself at liberty under the writ hereinbefore mentioned, to equalize its assessment upon your orator's capital stock with the equalized assessed valuation of all other property assessed for taxation in the State of Illinois for the year 1900, it would have resulted in a reduction of not less than forty per cent. in the value placed upon said capital stock, of which one-fifth was required to be taken as the basis of taxation, and would have resulted in a reduction of not less than three and one-half millions ($3,500,000) in the net assessment made by said State Board in the year 1901 upon the capital stock, including the franchise of your orator for the year 1900.

Said assessment for the year 1901 of your orator's capital stock, including the franchise, and said assessments for the year 1901 upon the capital stock of the other corporations named in said writ, show that in no event would the said new assessment against the capital stock and franchise of your orator for the year 1900 have exceeded the sum of $5,717,067 if the said State Board, and the members thereof, had exercised their judgment and discretion in equalizing the valuation of your orator's capital stock and franchise for taxation for the year 1900 with the equalized assessment of all other taxable property assessed in the State of Illinois for the year 1900. But your orator is informed and believes, and so states the fact to be, that said Board, in making said new assessment for the year 1900, and in failing to equalize the same with the assessment made upon all other property in the State of Illinois for the year

1900, considered itself to be coerced by the writ issued by said Circuit Court of Sangamon County, and to be acting under specific instructions from said court, and to be debarred from all exercise of independent judgment and discretion in regard to the valuation to be placed upon your orator's capital stock and franchise for the year 1900, and for that reason only failed to reduce the amount of its said assessments so as to correspond with the assessments upon other property in the state for said year. Your orator is informed and believes, and therefore states the fact to be that the excess of the capital stock assessments against the corporations named in said writ over and above the net capital stock assessments against the same corporation for the year 1901 arose wholly out of the failure of said Board to equalize the said capital stock assessment for 1900 with the assessments made for the same year of all other taxable property in the State of Illinois.

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Twenty-first. Your orator further shows unto your Honors, and charges the fact to be, that the county clerk of Cook County, in extending the taxes against your orator upon said assessment of capital stock and franchises, so as aforesaid made by the State Board of Equalization in November, 1901, took as a basis the equalized assessed valuation of all property in the town of South Chicago for the year 1900, and added thereto the amount of the assessment made by the State Board of Equalization against the public utilities corporations of the city of Chicago aforesaid, and determined the rate of taxation to be 7.87 per cent.; that the tax upon the property of your orator at said rate amounts to the sum of $725,183.17, but said county clerk unlawfully and fraudulently, as a matter of law, increased the amount of said taxes thus ascertained by adding thereto a penalty in the sum of $36,259.06, upon the ostensible ground that your orator had failed to pay the taxes levied and assessed in the previous year; but your orator shows unto your Honors that your orator could not pay said taxes before they were assessed; that said taxes were not extended and placed upon the tax warrant, as a matter of fact, until in the month of January, 1902, at which time the rate was determined by the county clerk of Cook County; that the taxes for the year 1900 were payable by law in the year 1901, and the taxes for the year 1901 were payable in the year 1902; that the rate in the South Town of the City of Chicago, County of Cook, Northern Division of the Northern District of Illinois, within which political division of the County of Cook is situated the main office of your orator, and within which South Town is payable the tax levied upon said assessment of capital stock and franchise of your orator for the year 1901, is 5.543 per cent.; that your orator could not pay said taxes before they were assessed, and could not know the amount thereof before the county clerk had extended the taxes upon the assessment so as aforesaid made in November, 1901, for and on account of the year 1900, against your orator by the State Board of Equalization; and your orator charges, as a matter of law, that in no event had the county clerk of Cook County any power or authority, nor was there any valid warrant of law or otherwise, for him extending the taxes upon the assessment so as aforesaid made by the State Board of Equalization in November, 1901, upon the capital stock and franchise of

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your orator, for and on account of the year 1900, at any other or different rate, if the same were at all valid, than the rate paid by all other property in the South Town of the City of Chicago for said year 1901.

And in this connection, your orator shows unto your Honors that by an act of the General Assembly of the State of Illinois, approved May 10, 1901, in force July 1, 1901, it is provided that all rates for taxes, thereinafter provided for, shall be computed by the county clerk on the assessed valuation of property, as equalized and assessed by the State Board of Equalization for state purposes, and on the asesssed valuation of property, as equalized and assessed
40 by the county Board of Review, and all property assessed by the State Board of Equalization for other taxes; that all state taxes shall be extended by the respective county clerks upon the property in their counties upon the valuation produced by the equalization and assessment of property by the State Board of Equalization; and that all other taxes shall be extended upon the valuation produced by the equalization and assessment of property by the county Board of Review, and all property originally assessed by the State Board of Equalization.

Twenty-second. And your orator further shows that by an act of the General Assembly of the State of Illinois, approved May 9, 1901, in force July 1, 1901, it is provided that in determining the amount of the maximum tax authorized to be levied by any statute of this state, the assessed valuation of the current year of the property in each taxing district, as equalized by the State Board of Equalization, shall be used, and if the amount of any tax certified to the county clerk for extension shall exceed the maximum allowed by law, determined as above provided, such excess shall be disregarded, and the residue only treated as the amount certified for extension; that the county clerk in each county shall ascertain the rates per cent. required to be extended upon the assessed valuation of the taxable property in the respective towns, townships, districts, incorporated cities and villages in his county, as equalized by the State Board of Equalization for the current year, to produce the several amounts certified by the taxing authorities in said county; provided, however, that if the aggregate of all the taxes (exclusive of state taxes, village taxes, levee taxes, school building taxes, district school taxes, high school taxes, and all other school taxes, road and bridge taxes, and also bonded indebtedness taxes in cities whose bonded indebtedness exceeds ten per cent. of the assessed
41 valuation of the property therein upon which, under existing laws, taxes are required to be extended and taxes levied pursuant to the mandate or judgment of any court of record on any bonded indebtedness), certified to be extended against any property in any part of any taxing district or municipality, shall exceed five per cent. of the assessed valuation thereof upon which the taxes are required to be extended, the rate per cent of the tax levy of such taxing district or municipality shall be reduced in the manner provided in said statute to bring the same down to five per cent. of the assessed value of said taxable property upon which said taxes are required by law to be extended; that the rate per cent. of the tax levy of every county, city, town, township, school district, park dis-

trict, sanitary district, road district, and other public authorities (except the state), shall be ascertained and determined (and reduced when necessary as above provided), in the manner hereinbefore specified, and shall then be extended by the county clerk upon the assessed value of the property subject thereto as equalized according to law.

And your orator charges the fact to be that the county clerk of Cook County, in determining the rate of taxation in the South Town for the year 1901, which taxes were due and payable in 1902, followed the statute limiting the rate of taxation to five per cent. of the assessed value as aforesaid; but in fixing the rate to be extended upon the assessment made by the State Board of Equalization in November, 1901, upon the capital stock and franchise of your orator, fixed and determined the rate at 7.87 per cent. of the amount of such assessment, and your orator charges that said rate of 7.87 per cent. is unwarranted by law, and the action of the county clerk in extending the tax rate upon said assessment as aforesaid is void to the extent of 2.32 per cent. at least, and not warranted by any law of the State of Illinois.

42 *Twenty-third.* Your orator further shows unto your Honors that the said Maurice Fitzgerald, collector of taxes for the South Town of the City of Chicago, has made demand upon your orator for the payment of said sum of money, and your orator fears that unless the same is paid by your orator he will attempt to collect the same by summary distress and sale of your orator's property.

Twenty-fourth. Your orator further shows unto your Honors that the said assessment, so made by the State Board of Equalization upon the capital stock and franchise of your orator, and the tax extended thereon by the County Clerk of Cook County is unjust, oppressive and confiscatory, and imposes upon your orator a greater portion of the public burden than is borne by any other similar corporation in the state of Illinois, and a greater burden in proportion to the value of the property of your orator than is borne by any other property of the same value in the state of Illinois, while the assessments of property made by the local assessors throughout the state of Illinois, as equalized by the State Board of Equalization, and the primary assessments of property made by said State Board of Equalization other than the assessment upon your orator and the five other corporations last aforesaid imposes upon the property thus assessed a less proportion of the burden of taxation than said property should rightfully bear. And your orator charges that if said assessment shall be declared to be valid and upheld by this honorable court, and the tax thus extended shall be sustained, it will be a taking of the property of your orator without due process of law, and your orator will be bearing, in comparison with other property assessed in the state of Illinois, more than its just proportion of the public burden, and the burden of taxation thus imposed upon your orator will be unequal and in contravention of the constitution of the state of Illinois, which provides that the general assembly shall pro-

43 vide such revenue as may be needful by levying a tax by valuation so that every person and corporation shall pay a

tax in proportion to the value of his, her or its property, such calculation to be ascertained by some person or persons to be elected or appointed in such manner as the general assembly shall direct, and not otherwise, so that taxes shall be equal and uniform throughout the state, and so that no one species of property from which the tax may be collected shall be taxed higher than any other species of property of the same value; and also in contravention of the constitution of the United States, which declares that no state shall deprive any person of life, liberty or property without due process of law, or deny to any person within its jurisdiction the equal protection of the laws, which constitutional guaranties your orator invokes and relies upon. And your orator further shows unto your Honors that said taxes, so assessed, have become a lien upon the property of your orator, and if the said taxes are not paid as assessed and extended upon the tax warrant, distress warrants will issue against your orator, and the property of your orator will be seized and sold to satisfy said assessment. And your orator charges and says that the action of the said State Board of Equalization, in making said assessment upon the capital stock and franchise of your orator, and the action of the county clerk of Cook county in extending the tax upon said assessment, and in assessing said penalty against the property of your orator, was arbitrary, oppressive, and in violation of the law, and will, if carried into effect, impose upon your orator a burden unjust and unequal as between itself and all other taxpayers throughout the state of Illinois, and will be a denial of the equal protection of the laws, and a violation of the fundamental guaranties contained in the constitution of the state of Illinois, and the constitution of the United States of America, and of the amendments thereto,
44 and particularly those provisions which provide that no person shall be denied the equal protection of the laws, and no person shall be deprived of property without due process of law.

Twenty-fifth. And your orator further shows unto your Honors that the making of said assessment on the capital stock and franchise of your orator by said State Board of Equalization, and the extension of said assessment upon the tax warrant of Cook county, Illinois, constitute and will constitute, a cloud upon the title to the property owned by your orator; and that the sum or value in dispute—exclusive of interest and costs—is upwards of two thousand dollars; that said assessment so made is an oppressive, disproportionate and discriminative valuation, intentionally and fraudulently laid upon your orator, and the property of your orator, whereby your orator will be subjected to much more than its proportionate share of the tax burden, and by such unequal and fraudulent assessment your orator is denied the equal protection of the laws; that said assessment is illegal, unconstitutional and void, because the said State Board of Equalization ascertained and fixed the full value of the capital stock of complainant at the par or face value thereof, and added to such full value the full amount of the outstanding bonded indebtedness of your orator, while said State Board of Equalization did not similarly assess

the capital stock and franchise of any other corporation engaged in the same line of business in the State of Illinois, and did not make an assessment on a similar or substantially similar basis upon the capital stock and franchise of any other corporation in the state of Illinois, railroad or otherwise, save and except a few of the public utilities corporations, so called, doing business in the city of Chicago, and being, to wit, the Chicago Edison Company, the Chicago Union Traction Company and the lines of street railroad owned by it, or by the corporations which it succeeded,
45 the Chicago Telephone Company, the Chicago City Railway Company, the Chicago Consolidated Traction Company, and your orator.

And your orator further charges that neither the local assessors nor the State Board of Equalization valued real and personal property at its fair cash value, when ascertaining or fixing the "full value" of any other property in the state, the assessment of which was committed to said local assessors, or to said State Board of Equalization, severally (save and except as to the corporations above mentioned), with the result that an unfair, unjust, arbitrary, discriminative and confiscatory assessment in respect to the capital stock and franchise of your orator was, by said State Board of Equalization, under the facts and circumstances hereinbefore set out, intentionally and purposely placed upon and against the property of your orator, and against your orator.

Twenty-sixth. Your orator further shows that the assessment thus made by the State Board of Equalization upon the capital stock and franchise of your orator is illegal, unjust and grossly discriminative against your orator; that said assessment so made by said State Board of Equalization, as matter of fact, amounts to a sum nearly double the total net assessment made by the State Board of Equalization upon the capital stock and franchises of the three hundred and thirty-three other corporations in the state of Illinois assessed by the State Board of Equalization, notwithstanding the capital stock of your orator aggregates but one-ninth, approximately, of the paid up capital stock of said three hundred and thirty-three other corporations, as reported by said corporations, and the tangible property of your orator assessed by the local assessors is assessed at upwards of three-fifths of the total assessment upon all the tangible property of said three hundred and thirty-three other corporations.

46 Furthermore, notwithstanding a net assessment of between nine and ten millions of dollars is placed against the capital stock and franchise of your orator, no assessment was made by said State Board of Equalization against the capital stock and franchises of one hundred and sixteen steam railroads in the state of Illinois, or any or either of them, with a total capital stock at par of approximately $1,401,508,869, and a total bonded indebtedness of approximately $1,667,190,160; that the market value of the shares of capital stock of many of said steam railroads is much in excess of par; that of the total mileage of said one hundred and sixteen steam railroads, upwards of one-third lies within

the state of Illinois; that the assessment upon the tangible property of your orator is one twenty-fifth of the assessed value of the tangible property of said one hundred and sixteen railroads, comprising the entire railroad system of the state of Illinois, upwards of sixteen thousand miles in extent, and is nearly one-fifth of the assessment placed upon all railroad track, property, rolling stock and tangible property of every kind of all the steam railroads in the county of Cook. That while the total net assessment upon all the property, including the capital stock and franchise of your orator for the year 1900, if the additional assessment of capital stock and franchises made in November, 1901, shall be sustained by this Honorable Court, amounts to the sum of $13,082,960, the total equalized value of assessment of all steam railroad property in the county of Cook for said year is but $18,729,090.

And your orator charges that such an assessment is a gross perversion of the rights of your orator, is a taking of the property of your orator without due process of law, is a denial of the equal protection of the laws, and as such is in contravention of the guaranties contained in the constitution of the state of Illinois and the constitution of the United States of America, and of all amendments thereto, all of which guaranties your orator invokes and relies upon.

47 *Twenty-seventh.* Your orator further charges that the net assessment for the year 1900 of $450,000, originally made by the State Board of Equalization upon and against the capital stock and franchise of your orator, was, as matter of fact, upon a ratio of valuation fully as high as was by the State Board of Equalization assessed against the capital stock and franchise of any other gas company doing business in the State of Illinois, and higher than the ratio of value applied by said State Board of Equalization to the capital stock and franchise of any steam railroad in the State of Illinois.

Nevertheless, if this tax upon the assessment of capital stock and franchise of your orator, for the year 1900, over and above the tax upon said original assessment of $450,000, which has been paid by your orator, or if this Honorable Court shall be of opinion at the hearing of this cause that a net assessment in excess of said $450,000 should be placed upon and against the capital stock of your orator for the year 1900, your orator hereby tenders whatever sum may be rightfully due upon any assessment of capital stock and franchise of your orator that this court shall decree, your orator hereby offering to do any and everything that equity may demand in the premises. But your orator shows unto your Honors that it cannot tender or offer any definite amount, as your orator charges that the net assessment of $450,000 upon the capital stock of your orator was higher in proportion to the fair cash value of said capital stock than was any other assessment placed by the State Board of Equalization upon the capital stock of any other similar corporation in the state of Illinois, for said year 1900, and higher in proportion to the fair cash value of said property than any other property in the state of Illinois, save and except as to the

assessments placed upon the capital stock of the public utilities corporations aforesaid.

48 *Twenty-eighth.* Your orator shows that in case it should fail or refuse to pay said taxes and penalty extended against your orator upon said new capital stock assessment for 1900, said defendant, Maurice Fitzgerald, as Town Collector as aforesaid, and said defendant, Samuel B. Raymond, as such County Collector, after the return of said warrant for the year 1900 to him (if said taxes still remained unpaid), would be required to enforce the collection of said taxes against your orator, and to that end to levy the same by distress and sale of the goods and chattels of your orator, and that such proceeding by distress and sale, can not be prevented or defended against by your orator otherwise than by a bill in chancery.

Your orator further charges that the sum of $37,651.50 paid by your orator, being the taxes assessed upon the original assessment for the year 1900, made by the State Board of Equalization, should have been deducted by the county clerk of Cook County from the amount of the taxes extended upon said additional assessment made against the capital stock and franchise of your orator for the year 1900, and should now be deducted; that if your orator should be compelled to pay taxes twice on account of assessment against its capital stock and franchise, your orator would be subjected thereby, without fault on its part, to double taxation, and would to that extent be deprived of its property without due process of law, and denied the equal protection of the laws, in violation of the fourteenth article of Amendment to the Constitution of the United Sates of America.

That said penalty of $36,259.06, assessed against your orator for alleged failure on the part of your orator to pay the taxes on said additional assessment of capital stock and franchises of your orator, was imposed without authority of law, and said alleged penalty is void.

Your orator further charges that in determining the aggregate rate per cent. of taxation upon said assessment of capital stock

49 and franchise of your orator at 7.87 per cent., the county clerk of Cook County acted without warrant of law, and that in no event, assuming a valid assessment for some amount had been made against the capital stock and franchise of your orator, should the rate at which said assessment might be extended be higher than 5.543 per cent., and that the imposition of said alleged penalty upon and against the property of your orator, and the extending of said tax at the rate of 7.87 per cent., upon and against the property of your orator, is a taking of the property of your orator without due process of law, and is a denial of the equal protection of the laws, and as such contrary to and in violation of the constitutional guarantees contained in the Constitution of the State of Illinois and of the United States of America, and particularly the fourteenth article of amendment thereto.

Your orator further shows unto your Honors that, inasmuch as the taxes extended upon said original capital stock assessment for 1900 against your orator were paid by your orator voluntarily and

without protest, your orator will be unable to recover from said county treasurer or from any one else the amount of such taxes in an action at law; nor will your orator be permitted to interpose, as a set off in any action at law against your orator for said taxes extended upon said additional capital stock assessment for 1900, the amount so as aforesaid paid by your orator on account of capital stock and franchise of your orator for the year 1900.

Your orator further shows that the tax upon said additional assessment of capital stock and franchise of your orator, when collected, is required to be distributed to the City of Chicago, the county treasurer of Cook County, the treasurer of the Sanitary District, and other municipal bodies and officers entitled to receive the same, and if your oartor, under compulsion and under threat of a dis-
50 traint should pay taxes to the defendants, your orator would perhaps be entitled to maintain against said defendants an action at law to recover the amount of said illegal taxes so exacted from your orator under compulsion; but such action at law would not afford your orator any substantial relief or protection in respect to such illegal taxes, for the reason that the said defendants have not sufficient assets and resources with which to satisfy any judgment which your orator might recover against them in such action at law. And while it is true your orator might possibly maintain actions against taxing bodies receiving a proportion of such taxes, a multiplicity of suits would result, from which this court, as a court of equity, can relieve it.

Your orator further charges that said new capital stock assessment for 1900 against your orator is illegal, unequal, wrongful and in violation of the Constitution of the United States, as well as in violation of the Constitution of the State of Illinois, for the following reasons, among others:

(1.) The first original assessment made in the year 1900 against the capital stock and franchise of your orator for the year 1900, by the State Board of Equalization, as hereinbefore set forth, and upon which taxes have been extended and paid by your orator as aforesaid, has never been vacated or set aside in any judicial or other proceeding to which your orator was a party. In said mandamus proceeding in said Circuit Court of Sangamon County, said court had no power or jurisdiction to set aside, annul or vacate said original capital stock assessment made against your orator during the pendency of said proceeding. Your orator was not a party to said proceeding, and had no opportunity to be heard therein, and your orator charges that said original assessment was legal and valid and that your orator was entitled to rely, and did and does rely upon said original assessment as the final capital stock assessment against your orator for the year 1900, and that such original assessment could only be set
51 aside if at all, in some proceeding to which your orator was a party; that the making of said new assessment by said State Board in November, 1901, and the collection of the taxes extended thereon, now being attempted to be made, as hereinbefore set forth, constitute an attempt to take your orator's property without due process of law, and are in violation of the fourteenth amendment to

the Constitution of the United States, and of the Constitution of the State of Illinois.

(2.) After having made said original capital stock assessment against your orator in December, 1900, and after having adjourned its annual session for that year, said State Board had no power or jurisdiction to make a new capital stock assessment for 1900 against your orator. That said new assessment was made without authority of law and is void, and the collection of said taxes extended upon said new assessment would be a taking of your orator's property without due process of law, and in violation of said fourteenth amendment of the Constitution of the United States, and of the Constitution of the State of Illinois.

(3.) Under the coercion of said writ of mandamus, issued by the said Circuit Court of Sangamon County, said State Board of Equalization selected out of the body of property owners in Illinois your orator and nineteen other corporate taxpayers, and subjected your orator and said nineteen other corporate taxpayers to an additional, oppressive, discriminating and unjust capital stock assessment, whereby it is sought to subject them to more than their proportionate share of taxation, and by such unequal and such unlawfully increased assessment and taxation, your orator is denied the equal protection of the laws guaranteed by said fourteenth amendment.

(4.) The said State Board of Equalization in the year 1900 made its assessment upon the capital stock of all the corporations
52 in the State of Illinois, which said State Board is authorized to assess, being 334 in number, under the rules adopted by said State Board in November, 1900, and under which rules the original assessment was made against your orator's capital stock. That under said rules said original assessment against your orator was made on the same basis of valuation as the assessments made by said Board in said year against all other corporations subject to capital stock assesment in the State of Illinois; that said writ of mandamus required said Board to make said new assessment against your orator's capital stock for the year 1900 upon an entirely different basis from that prescribed in said rules, and from that upon which all other corporations in the State of Illinois (except those specifically mentioned in said writ of mandamus,) had been assessed for the year 1900, and that said new assessment upon the capital stock of your orator for the year 1900 was in fact made by said State Board upon an entirely different basis from that applied by said State Board in assessing the capital stock of all other corporations in the State of Illinois for the year 1900, except those named in said writ of mandamus, and that no new or additional assessment upon the capital stock of any other of the corporations of Illinois, except those specifically named in said writ, has been made, nor are any proceedings pending or contemplated for a new or additional assessment of the capital stock of any other of the corporations subject to capital stock assessment in the State of Illinois. That by such action of said Board your orator has been deprived of the equal protection of the laws, in violation of said fourteenth amendment to the Constitution of the United States, and your orator is thereby

subected to excessive and disproportionate taxation as compared with all other corporations subject to capital stock assessment in the State of Illinois with the exception of those specifically mentioned in said writ, contrary to the Constitution of the State of Illinois.

53 Wherefore, your orator charges, by reason of the foregoing matters, that said additional assessment of capital stock and franchise of your orator, and the threatened attempt of the defendant herein to collect the taxes extended upon said additional assessment, inflict upon your orator a great and irreparable injury for which your orator has no complete and adequate remedy at law.

Forasmuch, therefore, as your orator is remediless, save in a court of equity, where matters of this sort are properly cognizable and relievable, your orator prays that the defendant may be summoned to appear and answer this your orator's bill of complaint according to the usual practice in chancery (but not under oath, answer under oath being hereby expressly waived); that the court will declare and decree that said additional assessment of $9,217,067 upon the capital stock and franchise of your orator for the year 1900, and the taxes and penalty of $761,442.23 extended thereon, are illegal and void, and that the making of said assessment and the extending of said taxes thereon are a taking of the property of your orator without due process of law and are a denial of the equal protection of the laws, and as such in violation of the Fourteenth Article of Amendment of the Constitution of the United States and of the Constitution of the state of Illinois; that the court will perpetually enjoin the defendant from collecting said taxes or any part thereof; that if a part only of said taxes shall be found by this court to be illegal and void, the relief herein prayed against the whole of said taxes may be granted as to so much thereof as shall be so found by this court to be illegal and void, and that the defendant may be temporarily restrained from attempting in any manner to collect said taxes or any part thereof until the further order of this court; and that your orator

53¼ may have such other and further relief as may be equitable and as may be necessary to fully secure and protect your orator's rights in the premises.

THE PEOPLE'S GAS LIGHT AND COKE COMPANY,
By LYMAN A. WILEY, *Secretary.*

MEAGHER & WHITNEY,
Solicitors and of Counsel.

53½ STATE OF ILLINOIS, *County of Cook, ss:*

Lyman A. Wiley being first duly sworn, on oath deposes and says that he is the Secretary of The Peoples Gas Light and Coke Company, complainant in the above entitled cause; that he has read the foregoing bill of complaint, and knows the contents thereof, and that the matters and things therein set forth are true, except as to such matters and things as are therein stated to be made upon information

and belief, and as to such matters as are stated to be upon information and belief affiant believes the same to be true.

LYMAN A. WILEY.

Subscribed and sworn to before me, this fourteenth day of February, 1902.

FRED L. BLACKINTON,
[SEAL.] *Notary Public.*

(Endorsed:) Filed Feb. 14, 1902. S. W. Burnham, Clerk.

54 And on to-wit: the *the* twenty-eighth day of June, 1902, came the defendants in said entitled cause by their solicitors and filed in the clerk's office of said Court their certain joint and several answer in the words and figures following to-wit:

55 *Joint & Several Answers.*

In the United States Circuit Court, Northern District of Illinois.

No. —.

THE PEOPLE'S GAS LIGHT & COKE COMPANY, Complainant,
vs.
SAMUEL B. RAYMOND, County Treasurer and *ex-Officio* County Collector of Cook County; and MAURICE FITZGERALD, Collector of the Town of South Chicago, Defendants.

The joint and several answer of Samuel B. Raymond, County Treasurer and *ex-officio* County Collector of Cook County, and Maurice Fitzgerald, Collector of the Town of South Chicago, defendants in the above entitled cause, by Edwin W. Sims, County Attorney, Frank L. Shepard, Assistant County Attorney, and William F. Struckmann, Assistant County Attorney, their solicitors, to the bill of complaint of the Peoples Gas Light & Coke Company, complainant.

These defendants, now and at all times hereafter saving and reserving unto themselves all benefit and advantage of exception which can or may be had or taken to the many errors, uncertainties and other imperfections in the said bill of complaint contained, for answer thereunto or to so much and such parts thereof as these defendants are advised it is or are material or necessary for them to make answer unto, answering say:

1. These defendants admit that complainant is a corporation organized and existing under and by virtue of the laws of the State of Illinois, and is engaged in the manufacture, sale and distribution of gas in the City of Chicago, with its principal office in the City of Chicago; that the defendant Maurice Fitzgerald is the Town Collector of the Town of South Chicago in the City of Chicago, County of

Cook and State of Illinois, and that the defendant Samuel B. Raymond is the County Treasurer and *ex-officio* County Collector of said Cook County.

2. These defendants admit that the defendant Maurice Fitzgerald is by law charged with the duty of collecting from the several persons named in the collector's warrants for said Town of South
56 Chicago the several sums of personal property taxes extended therein, and that in due course of time the said collector's warrants will come into the hands of the defendant Samuel B. Raymond, and that he is then required to proceed to collect the delinquent taxes by distress and sale, if necessary.

3. These defendants admit that the complainant after its incorporation laid mains for the delivery of gas to consumers in the City of Chicago, and from thence hitherto remained in, and is now engaged in, the business of manufacturing selling and distributing gas to the residents of the City of Chicago.

4. These defendants admit that on the 1st day of April, 1901, the complainant had outstanding capital stock of the face value of $28,668,800, and had outstanding a bonded indebtedness of $34,496,000.; that the real estate owned by complainant was situated in the County of Cook and State of Illinois, and was all assessed by the Board of Assessors and Board of Review of Cook County for the year 1900 on the same basis as other real estate in said county.

5. These defendants further answering admit that the said complainant in the 5th paragraph of its bill of complaint has made a substantially correct statement of the laws of the State of Illinois in regard to the duties of the local assessing tribunals of said State.

6. These defendants admit that the State Board of Equalization of the State of Illinois is vested with power, and charged with the duty, to review and equalize, as between the different counties of the State, the assessments made by the local assessors upon property throughout the State, and that said State Board is required to assess the capital stock of certain companies or associations incorporated under the laws of the State of Illinois, and to assess the railroad property denominated in the review laws as "railroad track" and "rolling stock" substantially as in paragraph sixth of complainant's bill of complaint set forth; and admit that the taxes were extended by the different county clerks of the State as alleged in complainant's bill of complaint.

7. These defendants deny that the complainant or anyone for it, within the time and in the manner required by law, listed
57 for taxation all its property subject to taxation in said county for the year 1900; but these defendants admit that the local assessing tribunals of the County of Cook did make an assessment again- complainant of its property subject to assessment for the year 1900 by said local assessor. And these defendants admit that the State Board of Equalization at its regular session for the year 1900 adopted certain rules as in paragraph 8th of complainant's bill of complaint set forth; but these defendants state and allege the fact to be that by the judgment of the Circuit Court of Sangamon County and the Supreme Court of the State of Illinois, in a proceeding in

which the legality of said alleged rules was put in issue, it was adjudged that the said alleged rules were in conflict with the revenue laws of the State of Illinois, and were and are illegal and inoperative; and these defendants state and allege the fact to be that the rules which were theretofore in force remained in force until on or about the 10th day of December, 1901, when the State Board of Equalization adopted certain other rules which are substantially set forth in paragraph 18th on pages 32 and 33 of complainant's bill of complaint.

9. These defendants admit that the State Board of Equalization at its regular session in the year 1900, as required by law equalized the assessments of the properties assessed by the different local assessing tribunals of the State, and that the total value of all property owned by complainant on the 1st day of April, 1900 in said county and there lawfully assessed was fixed at the sum of $17,079,469. and at the assessed value of $3,415,893. And these defendants admit that complainant by its officers appeared before said State Board of Equalization, and that the said State Board made an alleged finding of the full value of complainant's capital stock and franchise of the sum of $19,329,465. and of an assessed value of $3,865,893, and deducted from said alleged assessed value the equalized assessed value of complainant's tangible property of $3,415,893. leaving an alleged net assessment of the capital stock and franchise and property of complainant for the year 1900 in excess of said equalized value of tangible property of $450,000.

58 10. These defendants as to the allegations in the 10th paragraph of complainant's bill of complaint concerning the alleged assessments of the capital stock and franchise of other corporations and associations in the State of Illinois say that they have no knowledge or information, save as alleged in said bill concerning the same, and neither admit nor deny the same, but if the same should become material to the issues herein call for strict proof thereof.

11. These defendants further answering, as to the allegations in the 11th paragraph of complainant's bill of complaint contained concerning the assessments against the different properties in said paragraph enumerated, say that they have no knowledge or information save as in said bill of complaint contained, concerning the same, and neither admit nor deny the same, but if the same should become material to the issues herein call for strict proof thereof; but these defendants do deny that any of the properties enumerated in said 11th paragraph were by the local assessors intentionally or deliberately assessed at less than one-fifth of the full value thereof, but these defendants state and allege the fact to be that the different assessing tribunals of the State assessed the different properties subject to assessment by them at an assessed value of one-fifth of what said assessing tribunals considered and ascertained to be the full fair cash value thereof.

12. These defendants further answering as to the allegations in the 12th paragraph of complainant's bill of complaint contained concerning "the State Board of Agriculture" and concerning the statis-

tical report for the year 1900 made by the secretary of the State Board of Agriculture say, that they have no knowledge or information concerning the same, save as by said bill, and neither admit nor deny the same, but if the same should become material to the issues herein, call for strict proof thereof; but these defendants deny that the alleged valuation as in said alleged statistical report set forth represents the actual fair cash valuation of the different properties described or enumerated therein.

13. These defendants further answering as to the allegations in the 13th paragraph of complainant's bill of complaint con-
59 cerning the assessment of taxable property in the State of Illinois and in the County of Cook for the year 1899, 1900 and 1901 say, that they have no knowledge or information, save as by said bill of complaint, concerning the same, and neither admit nor deny the same, but if the same should become material to the issued herein, these defendants call for strict proof thereof; but these defendants deny that the assessed valuations of taxable property assessed by the local assessors of Cook County, and the equalized value of "railroad track," "rolling stock" and capital stock of any corporation or association of the State of Illinois was not assessed at an assessed value of as much as one-fifth of its full value; and deny that such properties were assessed at not to exceed an assessed value of one-fifth of 60 per cent. of the full value thereof; and deny that the equalized valuation on "railroad track," "rolling stock" and "improvements on right of way" was not as much as one-fifth of 50 per cent. of the full value thereof; And these defendants further answering, as to the allegations concerning the different gas companies, other than complainant, engaged in furnishing and supplying gas to consumers in cities, villages and towns in said State, and concerning the alleged assessments of other properties, say, that these defendants have no knowledge or information, save as by said bill of complaint concerning the same, and neither admit nor deny the same, but if the same should become material to the issues herein, call for strict proof thereof. These defendants further answering deny that the local assessors throughout the State of Illinois intentionally, systematically and deliberately undervalued the property assessed by them, and valued and assessed the full value of the property generally in the State for the year 1900 at not to exceed 60 per cent. of its fair cash value; and deny that said alleged under-valuation was in pursuance of any settled plan or policy to undervalue said property and thereby relieve the owners thereof from bearing their just proportion of the public burden; but these defendants state and allege the fact to be that the assessed valuation of all properties in the State was by the different assessing tribunals of the Stat-
60 fixed at one-fifth of what such assessing tribunals considered and ascertain to be the full fair cash value thereof.

14. These defendants admit that every person and corporation in the State of Illinois should pay a tax in proportion to the value of the property of such person or corporation, and that assessments of such property should be made by the different assessing tribunals of the State at an assessed value of one fifth of its fair cash

value to secure, as far as possible an equal and uniform assessment thereof; but these defendants deny that the property of complainant and a few other corporations was assessed at a higher proportion of its actual fair cash value than other property generally in the State. These defendants admit that the alleged net assessment of the capital stock and franchise made against complainant was certified to the County Clerk of Cook County, and that taxes thereafter extended thereon, and that complainant paid the sum of $37,651.50 being the taxes extended against said alleged assessment of capital stock and franchise, and also paid the taxes levied against the tangible property of complainant assessed by the local assessing tribunals, and admit that no portion of said taxes has ever been tendered back or refunded to complainant; but these defendants deny that the payment of said sum of $37,651.50 was in full discharge of a proper tax for the year 1900 upon the capital stock and franchis- of complainant over and above the value of its tangible property; and these defendants deny that the said alleged assessment made by the State Board of Equalization at its regular session in 1900 was a final and conclusive adjudication of the assessed value of complainant's capital stock and franchise in excess of the equalized assessment of its tangible property; but these defendants state and allege the fact to be that the full fair cash value of complainant's capital stock and franchise on the 1st day of April, 1900 was far in excess of the sum of $63,164,800; that notwithstanding the fair cash value of complainant's capital stock and franchise as aforesaid, the said State Board of Equalization in total disregard of its duty as required by law, wilfully and fraudulently found the full value of complainant's capital stock and franchise, as above set forth,
61 and set down an assessment of the same over and above the assessment of its tangible property by the local assessors, as above set forth which said fraudulent and illegal action on the part of the said State Board of Equalization in relation to the valuation and assessment of complainant's property was had by and with the concurrent fraudulent action of complainant itself in its failure to properly list and schedule its property for the purpose of taxation and to furnish the statements required by law, and in its fraudulent representations to the said State Board; and these defendants further answering state and allege the fact to be that the said alleged assessment was and has been, long prior to the filing of this bill, held and declared by the Circuit Court of Sangamon County and by the Supreme Court of the State of Illinois to be null and void; and a re-assessment of the capital stock and franchise of the said complainant over and above the assessed value of its tangible property was ordered by the Circuit Court of Sangamon County.

15. Thes- defendants further answering admit that while the State Board was still in session for the year 1900 a petition for mandamus was filed in the Circuit Court of Sangamon County by the People of the State of Illinois upon the relation of one Catherine Goggin, a resident of said Cook County, and Robert C. Steel,

a resident of Sangamon County; these defendants say and allege the fact to be, that the proceedings and judgment heretofore referred to in and by which a new assessment was ordered as aforesaid, were had in said mandamus proceeding in said Circuit Court of Sangamon County. These defendants further state and allege the fact to be that it was prayed in said petition for mandamus, that said State Board of Equalization be commanded to make a lawful assessment for the year 1900 upon the capital stock and franchise of the complainant herein and other corporations named in said petition. These defendants further admit that neither the complainant herein nor any of said other corporations were made parties defendant to said petition; but these defendants state and allege the fact to be, that this complainant and the other corporations named in said petition were requested and directed by the said State Board to appear in said mandamus proceeding
62 by their own solicitors, and to make such defense or defenses as they might deem advisable; that this complainant and said other corporations, after a due consideration of the premises, employed attorneys and counsellors who appeared in said proceedings in the Circuit Court of Sangamon County and in the appeal taken to the Supreme Court of the State of Illinois, and made such defenses as they deemed advisable, which defenses were made for the benefit of the complainant herein and the other said corporations, as fully and effectually as if this complainant and said other corporations had been parties defendant to said petition for mandamus by name. These defendants admit that final judgment was rendered by the Circuit Court of Sangamon County, and that an appeal was prayed to the Supreme Court of the State of Illinois; but these defendants have no knowledge or information, save as contained in said bill of complaint, as to what defenses were interposed in said Circuit Court or in said Supreme Court, and neither admit nor deny the allegations in said bill concerning the same but call for strict proof thereof. These defendants admit that the Supreme Court of Illinois on or about the 24th day of October, 1901, affirmed the said judgment of the said Circuit Court of Sangamon County, and that thereafter a peremptory writ of mandamus was issued by the Circuit Court of Sangamon County commanding substantially as on pages 26 & 27 of complainant's bill of complaint set forth.

16. These defendants further answering admit that between the annual meeting of the State Board of Equalization for the year 1900 and the annual meeting for the year 1901 an election intervened and that the membership of said Board greatly changed; and admit that while the said State Board was in regular session in 1901 a peremptory writ under the judgment of said Sangamon County Circuit — was served upon the members thereof. These defendants as to the allegations in said bill of complaint that the said State Board by its counsel appeared before said Circuit Court of Sangamon County and applied for an extension of time in which to make its return to said mandamus writ say, that they have no knowledge and are not informed, save as by said bill, and

neither admit nor deny the same, but if the same should be-
63 come material to the issues there they call for strict proof thereof. And as to the allegations in said bill of complaint contained as to what disposition was made of said alleged application and as to the language alleged to have been used by the judge of said Circuit Court, these defendants say they have no knowledge or information, save as by said bill, and neither admit nor deny the same, but if the same should become material to the issues herein they call for strict proof thereof.

These defendants further answering admit that thereafter, and on or about the 20th day of November, 1901, the said State Board of Equalization made an assessment of the capital stock and franchise of the complainant in the several amounts as set forth on page 29 of complainant's bill of complaint; but these defendants deny that the said State Board in making said assessments was coerced, or that the members thereof considered themselves to be coerced by the said writ of said Circuit Court of Sangamon County, or that they were acting, or considered themselves to be acting under specific instructions, or that they were debarred from the exercise of their independent judgment and discretion; and deny that said assessment was made without any attempt to equalize the same, or without taking into account the assessment of $450,000. made for the year 1900.

18. These defendants admit that the Supreme Court of the State of Illinois in said mandamus case held, that the alleged rules adopted by the said Board in the year 1900 were in conflict with the revenue laws of the State of Illinois, and were illegal and inoperative; and admit that on or about the 10th day of December, 1901, the said State Board adopted the rules set forth on pages 32 and 33 of complainant's bill of complaint.

19. And these defendants as to the allegations in the 19th paragraph of complainant's bill of complaint contained concerning the alleged assessments made by the State Board of Equalization in the year 1901 for the assessment of the capital stock and franchise of the several companies therein named (except as to complainant) for the year 1900 and for the year 1901, say, that they have no knowledge or information, save as in said bill contained, and neither admit nor deny the same, but if the same should become
64 material to the issues herein call for strict proof thereof.

20. These defendants deny that the equalized assessed valuation of taxable property in the State of Illinois for the years 1899, 1900 & 1901 did not exceed one-fifth of the actual value thereof and deny that the assessments of the different properties in the State made by the local assessing tribunals for said years respectively were made upon any other basis than one-fifth of what said local assessing tribunals considered and determined to be the actual fair cash value of such property; and deny that there ought to have been any reduction for the year 1900 of the value placed upon the capital stock and franchise of complainant assessed by the State Board of Equalization; and deny that in no event would the valuation of the capital stock and franchise of complainant

have exceeded the sum of $5,717,067.; and deny that there was any failure of the said State Board of Equalization to equalize the capital stock assessment of complainant for the year 1900; but these defendants state and allege the fact to be, that the assessments of the capital stock and franchise of complainant for the year 1900, as well as the assessment of all persons and corporations in the State of Illinois, was by the different assessing tribunals assessed at an assessed valuation of one-fifth of what such assessing tribunals considered and ascertained to be the full fair cash value thereof.

21. These defendants admit that the County Clerk of Cook County extended taxes against the assessment of complainant's capital stock and franchise made in the year 1901, for the year 1900, which taxes amount in the aggregate to the sum of $725,183.17; and these defendants further answering admit that the County Clerk of Cook County, also extended on the collector's warrants the further sum of $36,259.06 as interest under the provisions of the revenue laws of the State of Illinois; but deny that said action of the County Clerk in extending said taxes, or in extending or adding the said $36,259.06 as interest, was or is unlawful or fraudulent; and deny that the County Clerk ought to have extended against said assessment for the year 1900 the same tax rate that was extended against the property in Cook County for the year 1901.

65 21. These defendants admit that the different tax rates in the County of Cook for the years 1900 and 1901 are as alleged in paragraph 21st of complainant's bill of complaint.

22. These defendants further answering admit that in 1900 the General Assembly of the State of Illinois passed a certain law, which was approved May 9, 1901, and went into effect July 1, 1901, the substance of which is substantially set forth in paragraph 22nd of complainant's bill of complaint; but these defendants deny that said law had or should have any application to the extension of taxes on complainant's property assessed and taxable for the year 1900.

23. These defendants admit that the defendant Maurice Fitzgerald has demanded of the complainant payment of the taxes extended against its capital stock and franchise assessment for the year 1900.

24. These defendants deny that the assessment made by the State Board of Equalization upon the capital stock and franchise of complainant for the year 1900 and the taxes extended thereon are unjust, oppressive or confiscatory, or impose upon complainant a greater burden in proportion to the value of the property of complainant than is bourne by other property of the same value in the State of Illinois; and deny that the collection of said tax would be taking of the property of complainant without due process of law, and would be in contravention of the constitution of the State of Illinois or of the constitution of the United States; and deny that it would deny to complainant the equal protection of the laws; and these defendants deny that the action of the State Board of Equalization in making said assessment was arbitrary,

oppressive, or in violation of the law; and deny that if carried into effect it will impose upon complainant an unjust and unequal burden as between itself and other tax-payers; and will deny to complainant the equal protection of the laws, or will be a taking of the property of complainant without due process of law.

25. These defendants deny that the assessment made by
65 the State Board of Equalization of complainant's capital stock and franchise for the year 1900 is oppressive, disproportionate or discriminative, or that it was intentionally and fraudulently laid upon complainant, or that the said assessment is illegal, unconstitutional or void. These defendants deny that the said State Board of Equalization did not assess the capital stock and franchise of other corporations engaged in the same line of business as complainant upon the same basis as complainant's assessment; and deny that no assessment of the capital stock and franchise of steam railroads was made by said State Board; and deny that said assessment or the assessment of other property in the State was intentionally and purposely made to discriminate against complainant, or in favor of any other property owner.

26. These defendants deny that the said assessment is illegal, unjust, and grossly discriminative against complainant, or that it is a gross perversion of the rights of complainant, or is taking of complainants' property without due process of law, or denies to complainant the equal protection of the laws. And these defendants as to the allegations in the 26th paragraph of complainant's bill of complaint as to the assessments, valuations and other matters concerning the different properties therein mentioned say that they have no knowledge or information, save as in said bill of complaint contained, and neither admit nor deny the same, but if the same should become material to the issues herein call for strict proof thereof.

27. These defendants deny that the net assessment of $450,000 for the year 1900 of complainant's capital stock and franchise was upon a basis fully as high as the assessments against the capital stock and franchise of other corporations in the State of Illinois; and deny that complainant should have credit for the taxes voluntarily paid upon said alleged assessment of $450,000.

28. These defendants admit that unless the taxes extended upon the assessment of complainant's capital stock and franchise made in the year 1901 for the year 1900 are collected by the defendant
Maurice Fitzgerald, this defendant Samuel B. Raymond in
67 due course of time, under the laws of the State of Illinois, will be called upon to make collection of the same. These defendants deny that complainant is entitled to any reduction from said taxes, either on account of the payment upon the alleged assessment of $450,000 or on account of the interest and penalties added under the provisions of the revenue laws of the State; and deny that the rate percentage of taxation extended against complainant's capital stock and franchise should not be higher than 5.543%; but these defendants state and allege the fact to be that the rate of 7.87% as extended by the County Clerk is the lawful rate.

These defendants further answering deny that the said new capi-

tal stock assessment for the year 1901 is illegal, unequal, wrongful, and in violation of the constitution of the United States or of the State of Illinois, for any of the reasons set forth on pages 49, 50 & 51 of complainant's bill of complaint.

And these defendants further answering say as to the allegations in said bill of complaint contained, not herein specifically answered, admitted or denied, these defendants neither admit nor deny the same, but call for strict proof therof.

And these defendants further answering deny that the complainant is entitled to the relief or any part thereof in said bill of complaint demanded, and they pray the same advantage of this answer as if they had pleaded or demurred to the same; and they pray to be dismissed with their reasonable costs and charges in this behalf sustained.

SAMUEL B. RAYMOND,
County Treasurer and ex-officio
County Collector of Cook County.
MAURICE FITZGERALD,
Collector of the Town of South Chicago.
By EDWIN W. SIMS,
County Attorney.
FRANK L. SHEPARD,
Ass't Co. Att'y.
WM. F. STRUCKMAN,
Ass't Co. Att'y, Their Solicitors.

EDWIN W. SIMS, *County Attorney,*
FRANK L. SHEPARD, *Ass't Co. Att'y,*
WILLIAM F. STRUCKMAN, *Ass't Co. Att'y,*
Solicitors for said Defendants.

(Endorsed:) Filed Jun- 28, 1902. Marshall E. Sampsell, Clerk.

68 And on to-wit: the ninth day of June, 1902, there was filed in the clerk's office of said Court in said entitled cause a certain Report and Testimony in words and figures following to-wit:

69 UNITED STATES OF AMERICA,
Northern District of Illinois, Northern Division, ss:

In the Circuit Court of the United States, Northern District of Illinois, Northern Division.

In Chancery. No. 26168.

PEOPLES' GAS LIGHT & COKE COMPANY
vs.
SAMUEL B. RAYMOND ET AL.

Master's Report.

To the Honorable, the Judges of said Court:

In obedience to an order of the court entered in the above entitled cause on the 1st day of May, A. D. 1902, by which it was referred

to the undersigned to ascertain and determine, upon the basis prescribed therein, the amount of additional taxes for the year 1900 which should be paid by the complainant, I have been attended from time to time by the solicitors for the different parties, and there has been introduced testimony which is herewith returned.

Upon an examination of this testimony and after hearing the suggestions of counsel at length, I find and report

That the amount of additional taxes to be paid by complainant herein, as aforesaid, is the sum of Two hundred and seventy-nine thousand nine hundred and ninety-seven dollars and forty-eight cents (279,997.48).

This result is arrived at from the testimony taken upon this hearing according to the following statement exhibiting the items upon which the calculation is made:

Net income, as shown by statement	$4,058,374.95
Less depreciation, 6% on value of personalty $14,221,428.57	853,285.71
	3,205,089.24
Less additional taxes	279,997.48
70 True net income	2,925,091.76
Capitalized at 6%	48,751,529.33
Equalized at 70%	34,126,070.53
Assessed value, 1/5	6,825,214.10
Tax at 7.87%	537,144.35
Full tax	$537,144.35
Paid	257,146.87
Payable	279,997.48

Insofar as computations submitted by counsel for defendants differ from the computation set forth, they are not under said order of reference, in my opinion, sustained by the evidence.

All of which is respectfully submitted.

HENRY W. BISHOP,
Master in Chancery of the Circuit Court of the United States, Northern District of Illinois.

Dated June 7, A. D. 1902.

I concur in the conclusions reached in the foregoing report.

WALTER McC. ALLEN,
Master in Chancery of the Circuit Court of the United States, Southern District of Illinois.

71 UNITED STATES OF AMERICA,
Northern District of Illinois, Northern Division, ss:

In the Circuit Court of the United States, Northern District of Illinois, Northern Division.

In Chancery. No. 26168.

PEOPLE'S GAS LIGHT & COKE COMPANY
vs.
SAMUEL B. RAYMOND ET AL.

Testimony taken before Henry W. Bishop, Master in Chancery, on Wednesday, the 30th day of April, A. D. 1902, at 11 o'clock in the forenoon.

Present: James F. Meagher, Esq., on behalf of the complainant; Frank L. Shepard, Esq., on behalf of defendants.

EDWARD J. E. WARD, called as a witness on behalf of the complainant, being first duly sworn, was examined in chief by Mr. Meagher and testified as follows:

Q. What is your name?
A. Edward J. E. Ward.
Q. Where do you live and what is your business?
A. 4908 Washington Park Place; auditor.
Q. Are you familiar with the business and the books of account of the People's Gas Light & Coke Company?
A. I am.
Q. How has that familiarity been created?
A. I have had charge, full charge of the books for the last fifteen years.
Q. Are the books kept under your immediate personal supervision?
A. They are, sir.
72 Q. Are you familiar with all the business of the company?
A. Yes.
Q. That familiarity has been created by reason of your acting as auditor of that company?
A. Yes, sir.
Q. What were the gross receipts of the People's Gas Light & Coke Company from its business for the year 1900, ending December 31, 1900?
A. $9,090,337.36.
Q. What were the operating expenses?
A. $4,447,786.65.
Q. Are there some outstanding bonds upon the property of that company?
A. There are some.
Q. What is the annual interest charge?
A. $1,857,800.00.

Q. Is that amount, $1,857,300.00 included in the operating expenses given by you of $4,447,786.65?

A. It is not.

Q. Then what were the net earnings?

A. $4,058,374.95.

Mr. SHEPARD: That is, you deducted the aggregate of the interest on the bonds in your statement of the operating expenses from your gross receipts?

The WITNESS: No, sir, we did not include the bond interest in that figure.

Q. Now, the difference between $9,090,337.36 and $4,058,374.95 which you say is the net earnings must comprehend something more than your operating expenses, which you say are $4,447,786.65. What is that item?

A. An item of $584,175.76.

Q. What is that item, how is that item made up?

A. It is the cost of repairs to street mains, services and meters and bad debts.

Q. Have you the items making up that item of $584,175.76?

A. I have, sir.

Q. How are the items made up?

A. Of works and repairs——

Q. Before we go into that, what do you mean by "bad debts?"

A. We charge up on our books the gross amount of sales shown by meter readings and credit on that cash received of course, and at the end of all items uncollectable we charge off to profit and loss.

Q. That is the items, the bill for gas, which you have been
73 unable to collect during the year?

A. That we have been unable to collect during the year.

Q. Prior to that and during the year, as I understand, the amount shown to be due from the meter readings is credited as so much cash?

A. Yes, sir.

Q. And at the end of the year the total amount of bills for gas that were considered bad, that could not be collected, were charged off?

A. Were charged off, yes, sir.

Q. For the year 1900, how much was thus charged off?

A. $129,160.99.

Q. This amount, if I understand you, consists of actual sums charged to consumers of gas in the City of Chicago, for gas consumed by them, but the bills for which were not paid and which you were unable to collect?

A. We were unable to collect.

Q. And at the end of the year you simply charged off this amount?

A. Yes, sir.

Q. Having previously in your method of business charged this amount to gross receipts?

A. Yes, sir.

Q. From meter readings?

A. Yes, sir.

Q. What are the other items making up the $584,175.76?

A. Works' repairs	$127,059.24
Meter repairs	43,480.52
Main repairs	102,512.58
Service repairs	87,966.81
Natural Gas meter repairs	2,400.00
Main repairs	23,959.15
Service repairs	6,235.82
Bad debts	129,160.99
Mains cut out and meters condemned	61,299.83
Meter deposits charged back	100.82
Total	$584,175.76

Q. I wish you would explain briefly how it comes that these meter repairs and main repairs are necessary.

74 A. In the case of mains, the vibration of heavy traffic, the elevated roads and street cars, sometimes break our mains; and of course we have to repair them. Then the ground sinking, sewers settling, anything like that breaks our service pipes and we have got to renew or repair them.

Q. Then you dig down where the break is——

A. Yes.

Q. —and take out the broken section and put a new one in?

A. Yes, sir.

Q. These amounts then that you have given for these repairs on this list, as I understand it, do not include anything for extension or anything of that sort?

A. Not at all, not at all, just replacing mains and broken service pipes.

Q. And this charge is really I suppose a charge on account of maintenance and equipment?

A. That is right.

Q. And is really a charge against operating expenses?

A. On operating account.

Q. But the bad debts you do not charge off till the end of the year?

A. Not till the end of the year, then we really only charge off nine months; we do not count a gas bill dead till it is three months overdue.

Mr. SHEPARD: But it would be twelve months between your charges, that is, you would carry over three months from the preceding year?

The WITNESS: Yes.

Q. Has that been your custom for any long period?

A. For fourteen years.

Q. Until three months have elapsed, you do not regard a gas bill as bad?

A. No, sir.

Q. In the meantime what do you do towards collecting them?

A. We try to collect them; they are mostly occasioned by people moving out of town and we have some collectors who make it their

business to try and place the men either through the post office or by the neighbors, make all the efforts they can to find the party, but if we do not get them in three months we figure that they are gone for good.

75 Q. You figure in other words that if they were findable in three months you would dig them up?

A. We figure if they were, that in that time we would get them.

Q. Mr. Ward, do you know what assessment was made by the local assessing bodies, the Board of Review and the local assessors of Cook County on the personal property of the People's Gas Light & Coke Company in Cook County for the year 1900?

A. $9,050,000.00.

Q. What did that personal property consist of?

A. It consists of the street mains and meters, steam engines, boilers, horses and wagons, harnesses, office furniture and fixture-, material on hand, coal, coke, oil, pipe, and fittings, and cash.

Mr. SHEPARD: That was the full value, $9,050,000.00 was the full value?

The WITNESS: Yes.

Mr. MEAGHER: As fixed by them. Of course we claim that their assessment was made on the supposed substantial basis as other property in this county.

Mr. SHEPARD: Instead of marking down the full value, assessed value one-half?

The WITNESS: That is right.

Mr. MEAGHER: That is right. We claim of course that is but 60 per cent. of its actual value according to our bill.

Q. Now, Mr. Ward, what were the net earnings of the People's Gas Light & Coke Company for the year ending December 31, 1900, after payment of the bonded indebtedness and after charging off these items you have given us?

A. $2,201,074.95.

Q. That was the actual net earnings, of your own knowledge?

A. Yes, sir.

Q. I will ask you to state whether or not you yourself made up the trial balance and closed the books showing all the operations of the People's Gas Light & Coke Company for the year 1900?

A. I did sir.

Q. And was that statement that you have given us as the net earnings of the company for that year the result of your efforts

76 and your own work, as shown by the books of that company?

A. Yes, sir.

Q. Were those books kept under your own supervision?

A. Yes, sir.

Q. And the actual net earnings of the company after payment of bond interest and of operating expenses and all those amounts which you have charged off for repairs and bad debts is $2,201,074.95?

A. That is right.

Q. What dividends, if any were paid by the People's Gas Light & Coke Company during that year?

A. Six per cent.

Q. What did the dividend requirements amount to?
A. $1,720,080.00.
Q. That was the dividend requirement?
A. Yes, sir.
Mr. MEAGHER: That is all.

Cross-examination.

By Mr. SHEPARD:

Q. The item of $9,090,337.36 includes all of the receipts from all sources, does it, Mr. Ward?
A. Everything, sir.
Q. Everything that came into the company's treasury during the year 1900?
A. Yes, sir.
Q. Your fiscal year is the calendar year?
A. Yes, sir, ending December 31 of each year.
Q. From this item of $9,090,337.36 nothing has been deducted? That shows simply the gross receipts, without anything being deducted from the gross receipts?
A. Without anything at all.
Q. Either in license fees, payment of license fees, taxes or any other charge?
A. No, sir, nothing is deducted from the gross receipts.
Q. In this item "Operating expenses," Mr. Ward, what does that comprehend?
A. Everything pertaining to the manufacture of gas, the clerks and collection of bills and expenditures for stationary and so forth.
77 Mr. MEAGHER: Oil, and coke?
The WITNESS: Oil, coke and coal that is used in gas manufacturing, all the material.
Q. That is property and material that is used in the operation of your plant and is included in operating expenses?
A. No, sir, it is not included in that, we carry a stock account and charge up just what is used during the year exactly.
Q. There is no item here for the purchase of material, is there?
A. No, sir, that is included in our returns to the Board of Review as our stock on hand, coal, coke, and oil, all actual stock on hand, used in the manufacture of gas. If we buy a hundred thousand tons of coal during the year, we open a stock account for that called "Coal Account." If we use 90,000 tons of coal, that is all that would appear in our operation, the 90,000 tons; the 10,000 tons we would have on hand.
Q. There is no expenditure shown here for materials purchased then on this statement?
A. None, no, sir, nothing except what has been actually used.
Q. In what item is the material expenditure included in this statement?
A. Well, I think we are both at cross-purposes.
Q. I think possibly we are. You have shown as operating ex-

penses an expenditure of $4,447,000.00; I want to ascertain just what that includes, whether it includes the expenditures for material and labor and other things, or just for the operation of your plant?

A. It includes all the material, sir, that was used, not all that was purchased; not all that was purchased but all that was actually used.

Q. Then if you paid out a million dollars for material during that year and used a half million, you only would include the half million in that item?

A. That is right.

Q. How much is included in that item for material purchased, as a matter of fact, do you know?

A. There is probably $2,800,000.00 to $3,000,000.00.

Q. The balance then would be considered as expenditures for the operation of the plant proper?

A. Yes, labor, salaries and so forth.

78 Q. What was your aggregate bonded indebtedness outstanding on April 1, 1900?

A. $44,496,000.00.

Q. And what interest do these bonds draw?

A. The majority of them draw five per cent.; some of them six per cent. and $500,000.00 of it seven per cent.

Q. You are charged here $1,857,300.00 for bond interest?

A. Yes, sir.

Q. Does that show the amount of bond interest paid out during that year?

A. Yes, sir.

Q. Mr. Ward, is your extension or betterment of your plant included in this item of $584,175.76?

A. No, sir.

Q. You have that indicated as charged off for street mains cut out and abandoned, renewals and repairs to works, meters, mains, services, and for bad debts?

A. Yes, sir.

Q. Now, in your renewals what—what do you mean by "renewals"?

A. The breaking of a service pipe or the breaking of a machine.

Q. That you have indicated a little while ago?

A. Yes, sir.

Q. What do you mean by repairs?

A. Well, sometimes there would be a leak there that we could sodder or put a collar on without taking it out complete, or put a screw on. Probably there might be a break that we could thread both ends of the service pipe and insert a new piece without cutting out that whole length of service pipe.

Q. Do these renewals or repairs, your portion of them, include any very large renewals or repairs, very extensive renewals or repairs, what would you say your largest single item for renewal is that is included in this aggregate sum?

A. In one portion of the amount you mean? The amount would be the largest?

Q. Any single charge which you have made for renewals during the year 1900, what is the largest, do you know?

A. Well, I could not say that, except in a general way, that the largest item we would possibly have in one place would be around $2,000.00.

79 Q. What would that be for?

A. That would be for the discovery of a leak that we would have to follow for several blocks of asphalt pavement for instance, we might discover a leak under the asphalt at the corner of a street and it might be five blocks away before we would discover the leak. It would not percolate through the asphalt but it would percolate through the ground and we would have to bore holes in the ground to find it, and of course we have got to keep on going until we find. Looking for it under asphalt is about the most expensive repairs we have.

Q. You say there is no betterment nor improvement other than repairs or extension included in this item of $584,000.00?

A. No, sir, no extension or betterment is included in that item.

Q. Mr. Ward, you have an item of $127,059.24 for repairs and renewals on works?

A. Yes, sir.

Q. What was that?

A. Well, that is for machinery, bricks under the boilers that were burned out, the fire brick, and the grate bars burned out, replacing them, repairing them.

Q. Does that include any purchases for new machinery?

A. No, sir. All new machinery and pipe and so forth is charged to renewals and construction.

Q. This item of $43,480.00 for meters, what does that include?

A. That is caused by meters placed in damp basements.

Q. Does that include any new meters put in?

A. No, sir, no, sir.

Q. Simply repairs to meters in use at the time?

A. Yes, sir, the meter will stop, maybe there will be water dripping on it and stop it, or it will get rusty, and when we go around month by month we find a man has used gas and our meter does not record any. We take it out, examine and repair it, get the rust off and clean it out, and put new dials on it.

Q. You say your aggregate dividend payment for 1900 was $1,720,080.00?

A. Yes, sir.

Q. What surplus did you show carried over?

80 A. Something over $584,000.00 I think it was.

Q. Wasn't it 4?

A. Is it shown on there?

Q. No.

A. I can easily tell. (After figuring.) $480,994.95.

Q. That is the surplus that you carried over from 1900 to 1901 after the payment of your dividend and all expenses and fixed charges, interest, taxes, and so forth?

A. Yes, sir.

Q. That was carried over as additional profit over and above the amount of dividend declared and paid?

A. Yes, sir.

Mr. MEAGHER: One moment; it was not additional profit.

Mr. SHEPARD: Well, profit in addition to the amount of dividend declared and paid.

Q. That was clear profit of the same character as your dividend?

A. Exactly.

Q. That added to the gross dividend payment would show what you claim to be the clear net profit of your company for that year?

A. Yes, sir.

Q. And included in this charge, this aggregate item of $4,447,000.00 designated as operating expenses or payments for the year 1900?

A. Yes, sir.

Q. That is to say the tax that you actually paid in 1900?

A. Yes, sir.

Q. That does not include any taxes paid in 1901, estimates made in 1900 for 1900?

Mr. MEAGHER: Explain to him how that is.

Q. The assessment made in 1900, the taxes made upon the assessment made in 1900 would not be extended till late in the Fall of 1900 and the taxes would not be collected till 1901 on assessments made this year. The tax will be extended late this Fall and would come into the hands of the collector early in January and the taxes would be payable after that time, which would be 1903.

81 Now, the taxes which you paid upon assessments of 1900 would not be paid till 1901. You have not included in this item any taxes not paid till 1901, have you?

A. Yes, sir; we got a memorandum of that, of the taxes, and journalized it into Accounts Payable and got it into our operation account in that way.

Q. So that it is charged in the year for which it was levied?

A. Yes, sir.

Q. Then the taxes paid in 1901 for 1900 are included in this 1900 statement of account?

A. Yes, sir.

Q. Are there any taxes paid in 1900 for the 1899 assessment or license fees included in this 1900 account?

A. No, sir.

Q. The taxes that you paid in 1900 were charged back to 1899, or rather included in 1899 in making up your account?

A. In closing the year, we get a memorandum; we do not close till the 20th of January and we can usually get a memorandum from the County Treasurer's office or the County Clerk's office of the amount of taxes that is due for the year and journalize it into Accounts Payable and get it into operations in that way.

Q. Mr. Ward, your company owns a large number of parcels and lots of real estate, does it not?

A. Yes, sir, wherever our works are we own the property.

Q. Have you much unimproved real estate, unoccupied real estate?

A. No, nothing that we do not place in actual use either for storage of material; we may have no buildings on it but we use it to store pipe and other material on it.

Q. Have you included in this item for operating expenses any estimate for the taxes which are in controversy here?

A. No, sir.

Q. Does your company issue a public statement of its accounts at the end of your fiscal year, 1900?

A. Yes, sir, each year it does.

Q. Is that published?

A. It is.

Q. Does that correspond to your statements here?

A. It is an exact copy of it.

82 Q. Do the books of your company show the payment of dividends for the year 1900 as you have testified to here?

A. Yes, sir.

Q. And the surplus carried over the same?

A. Yes, sir.

Q. In this item of $4,447,000.00 which you have charged up to operating expenses, do you include anything in that for depreciation of plant, your property?

A. Not a cent, sir.

Q. There is nothing charged off on your books for depreciation included in this item?

A. Not a dollar, no sir.

Q. The only items you claim that are akin to charges for depreciation are these items for renewals and repairs?

Mr. MEAGHER: Objected to as calling for a conclusion, as not evidence; he has not claimed these items are akin to depreciation, that is your claim.

Q. As a matter of fact, under your testimony as to the method of keeping the books of your company, these are akin to depreciation, are they not?

A. No, I would not say they are, they are practically operating expenses but we keep them as separate items.

Q. Breakage is a depreciation to that extent of your property, isn't it?

A. If we allow it to remain so, but it is a repair.

Q. It is thus far a depreciation of your property?

A. Not when we repair it.

Q. After you repair it, then it becomes in itself no longer a depreciation, but the cost of repairing it is the cost of making good a depreciation of your property, isn't it?

A. No, no; I would not say it is; it is the cost of repairing, I I would claim it is the maintaining of the property in running order.

Mr. MEAGHER: If you did not make those repairs, what would be the result?

Mr. SHEPARD: I think that is an unnecessary question.

Mr. MEAGHER: Manifestly, we would kill thousands of people if we did not make the repairs; that is not depreciation and cannot be made depreciation.

Mr. SHEPARD: It is nothing else but depreciation.

83 Q. Do you mean to say, Mr. Ward, that in these items for repairs of meters, aggregating in one case $43,000.00 in the other $2400.00 there were no replacements of meters?

A. Not a single solitary one; that is purely repairing on the meters.

Q. That does not apply to the mains, the item of $102,000.00, and $23,959.00?

A. It would apply to that as far as this, there might be 16 feet of a new piece of pipe put in there to replace the old where it was smashed or where electrolysis had eaten holes in it. It may have been absolutely new pipe; I have seen pipe eaten out, I have seen three pieces of pipe eaten out in 32 months at the same place.

Q. It might then be replacement on the pipes and mains, might be occasioned by a fracture or might be the entire wearing out of the same pipe?

A. Yes, it might be the wearing out of the same pipe, that is it might be the rusting down of a pipe till there was a hole in it.

Q. So it would be case aside as worn out and not case aside on account of any sudden accident to it?

A. That would occur in both cases.

Q. It might be worn out and to that extent replaced by a new pipe, or in some cases it might be replaced because of fracture in the old pipe by accident?

A. Yes, sir.

Q. So that part of these charges for replacement of mains is chargeable to the depreciation by the wearing away, by the erosion, or the expiration of the usual life of a part of the pipe?

A. No; no, it is mostly due to shock or sudden breakage. We practically renew our pipes every ten years.

Q. Put it this way; in this item there is nothing included for depreciation?

A. No, sir; we charge that off as a usual thing when we renew our pipes. For instance, we lay say a four inch pipe to supply a street and in ten years from now we will put in an eight inch pipe; we will then charge off to depreciation the value of the four inch pipe and charge to new construction the difference between
84 the value of the four inch and the eight inch pipe.

Q. That only occurs occasionally, does it?

A. It goes on from year to year.

Q. In certain localities?

A. Yes.

Q. It occurs every year but only in certain localities?

A. We will probably take a general overhauling, we did so in about 1894, '93, '94, and '95, and now probably in two years from now we will take and go over the whole system in the same way.

Q. How many times have you done that during the period you have been with the company?

A. They have done it once during my time.

Q. That is to say, they have enlarged the service pipes, the mains through the streets, and in doing so they have replaced——

A. By larger mains.

Q. —the old pipes which were or nearly worn out?

A. Exactly, they would do it that way.

Q. At that time, you started and put in new service pipe, in 1894 and '95?

A. Yes.

Q. Did that pertain to the whole system throughout Chicago?

A. Probably the whole system throughout Chicago and they had been used ten years before that.

Q. You have got an adequate system of service pipes and mains throughout the settled portions of the city, so far as they are concerned, have you not?

A. Well, no, I would not say that, for instance take Lake View or Hyde Park.

Q. Take the district down town?

A. Oh, anywhere down town it is probably well equipped.

Q. And the only change you have made in those pipes and mains are making and have made during the period since 1894 and '95 are those repairs and replacements that you make from time to time as they are needed?

A. Yes, sir, on account of breaks and leaks; we do not repair anything unless there is some cause for it.

Q. And by these repairs and renewals that you have suggested here you keep your property in running order.

A. We keep our property in running order, yes, sir.

85 Q. So that if you continue to make these repairs and these renewals, your property will always be maintained as an operating plant, and in running order?

Mr. MEAGHER: Objected to as calling for a conclusion.

Q. Is that right?

A. Am I to answer that?

Q. Yes.

A. No, sir, I would not say that, to do that, to put our plant in first class shape——

Q. Do you mean in first class order?

Mr. MEAGHER: Go on and answer the question as you started to.

The WITNESS: It would cost us fifty times the amount of that.

Mr. MEAGHER: Now, just read the question.

(Question read.)

Q. (Continuing.) And put it in not what you would call first class shape but in what you would call ordinary running operating condition and shape?

A. Well, so the gas would go through, so far as we knew.

Q. And as you now maintain it?

A. That is as it comes to our knowledge where there is a break.

Q. Well, if that is true, and you still continue to charge this off as you have charged if off here, you will never have to charge anything off for depreciation, will you?

A. Oh, yes; we could not expect that with these charges, which are small charges to our gas plant that our gas plant would remain in the original condition and value of it, what it cost, we could not expect that for a moment.

Q. To what extent would you say that the item of $584,000.00 would maintain your plant in its usual running order, and to what extent would you say that you would have to add to that under the head of, say, depreciation to keep your plant, to balance your account and keep your plant in its usual running and operating condition?

Mr. MEAGHER: Objected to on the ground that the witness has already testified that the item of $584,175.76 was simply the
86 cost of repairing breaks in meters, mains and services, and on account of bad debts not collected; on the further ground that the question is an evident attempt on the part of counsel to get away from the rule of the court as announced by Judge Grosscup in his decision; and on the further ground that it has not been shown by this witness that he is qualified to testify as to what amount of depreciation should be allowed for.

The MASTER: Answer subject to the objection.

A. I can only say with reference to the $584,000.00 that it is about a fair average of what we have been doing for years in that direction. As to how much the plant has depreciated, I could not say; I am not engineer enough to say as to that.

Q. Here is what I am getting at; I think you know possibly without this explanation. You have your plant here, and you repair it and renew it in part from time to time as your officers see fit. If you do so to the extent that it maintains your plant at its usual operating condition, then under your system of bookkeeping here you would have included that something which should have been charged or might be charged under the specific definition of depreciation?

A. No.

Q. Take for instance the furniture in this room, you renew some of it at the end of one year, this table is broken and you put in a new table, and the next year you replace that desk with a new one, and the next year you replace that table with a new one, and the next year you replace the chairs with new chairs and you charge those expenditures all to repairs and renewals and nothing to depreciation. You will say at the end of the time you have maintained the furniture in this room and have charged it all to renewals and nothing to depreciation of your property. Now, what I want to get at is how much in your judgment is included in this item of $584,175.76 which should be designated as a charge for depreciation in property, or a replacement or betterment of property, whichever you may term it.

A. Well, I would not consider any item in that as covering
87 that point. If we renew anything, as I explained to you a few minutes ago, if we have a four inch pipe and replace it

with a six inch, we charge off in that case the four inch pipe to depreciation and the six to renewals, new construction, that is what we call depreciation.

Q. You have no charge in here for that, for depreciation?

A. Not a cent.

Q. Then you made no such replacement in that year?

A. Wait a minute, I will qualify that answer to that extent, show me that statement, on this item Mains cut out and meters condemned, that is a depreciation of $61,299.83. I forgot I had that in. On the item of depreciation that is $61,000.00. That is where we cut out a main and charge the value of the main off and then the new and larger main we charge to new construction. The meters are meters that are absolutely useless and cannot be repaired. That $61,000.00 is covered by that statement; I forget I had that in.

Mr. SHEPARD: I think that is all.

Redirect examination.

By Mr. MEAGHER:

Q. Now, Mr. Ward, let me get at this by adopting the admirable illustration of my Brother Shepard. Take this table in this room, suppose a leg of this table was broken off and a new leg put under the table, would that, such a charge as you have indicated here cover the cost of breaks in pipes and mains?

A. Merely a charge for repairs.

Q. In other words, these items with the exception of this $61,299.83 are for repairs made to the personal property of the People's Gas Light & Coke Company occasioned by breaks in its mains or service pipes or meters?

Mr. SHEPARD: Objected to as improper.

Q. (Continuing:) Is that right?

A. That is right.

Q. Was there any depreciation taken off the horses, wagons and harness of the People's Gas Light & Coke Company at any time in the year 1900?

A. No, sir.

88 Q. Now, in the illustration of worn our pipes used by Mr. Shepard, what did you understand him to mean by that expression?

A. Well, I supposed he meant the entire system wearing out, or pieces of the entire system worn out by old age.

Q. Was there any depreciation made on that account during the year 1900 by the People's Gas Light & Coke Company or any amount charged for depreciation on that account?

A. Nothing outside of that $61,299.83.

Q. All other items in that account were repairs of the character that you have indicated, such as breaks in mains?

A. And the bad debts.

Q. And the bad debts, breaks in meters, freezing up of meters and so forth. When a break occurs in a main or meter, has the People's

Gas Light & Coke Company any choice in the matter? What must its first duty be?

A. Stop the leak of course.

Q. What would be the result if that were not done?

Mr. SHEPARD: Objected to as immaterial.

A. It would be dangerous to life and property.

Q. Then these items included in the total of $584,175.76 except the item $61,299.83 for mains cut out and meters condemned is for repairs to mains, meters and plant due to breaks which had to be attended to immediately, except as to the item involved in the bad debts?

Mr. SHEPARD: Objected to again as improper.

A. Yes, that is I would not call it all breaks.

Q. What, repairs?

Mr. SHEPARD: Objected to as leading, and as cross-examination of your own witness who has already testified upon that upon direct examination.

Q. I will ask you to state what was the occasion of the spending of this item altogether of $584,175.76?

Mr. SHEPARD: Objected to, the witness has already stated, has answered the same question several times.

89 Q. Will you explain what this item covered?

A. It is for repairs on account of breakage or electrolysis, for instance you would not call that a breakage, that is a leak in a pipe, it bores a hole in the pipe, you can call it breakage or not.

Q. The gas escapes?

A. The gas escapes, yes. The depression of service pipes, mains, by sewers caving in and water pipes breaking and a hundred and one things that will occur on the street, and then the meters, the condition of the meters caused by damp basements rusting them, the wearing out of the diaphragms and putting in new diaphragms from that cause.

Q. I understand, Mr. Ward, that as to the extensions made by the People's Gas Light & Coke Company of its mains and plant, no part of the cost thereof except this $61,299.83 is included in the operating expenses?

A. None at all, that is all charged to the proper designated account, street mains, service, meters, or works improvement.

Q. And this question of surplus which my Brother Shepard alludes to might possibly have been used in the way of extensions?

A. Yes, that is what it is used for.

Q. The profit over and above the dividend?

A. The profit over and above the dividend for construction purposes, new construction.

(Signature waived by agreement of counsel.)

90 10 a. m., WEDNESDAY, *May* 14, 1902.

Parties met pursuant to notice.
Present: Mr. *Mr.* Shepard.

WILLIAM L. SOUTHWORTH called as a witness on behalf of the defendant, being first duly sworn, was examined in chief by Mr. Shepard and testified as follows:

Q. What is your name?
A. William L. Southworth.
Q. Where is your resident?
A. 536 Ogden Street, Chicago.
Q. Your occupation?
A. Clerk in the County Clerk's office.
Q. How long have you been a clerk in the County Clerk's office?
A. Fifteen years.
Q. The County Clerk of Cook County?
A. Yes, sir.
Q. Mr. Southworth, the principal place of business and office of the People's Gas Light & Coke Company is in the Town of South Chicago, Cook County, Illinois, is it not?
A. It is assessed in the Town of South Chicago and its general office is in the South Town.
Q. What was the rate by which taxes were extended for the Town of South Chicago for the year 1900?
A. 8.36 7/10 in the Town of South Chicago.
Q. By what rate were the taxes extended by the County Clerk on the omitted assessment in the Town of South Chicago?
A. 7.87.
Q. On the one hundred dollars?
A. Yes.

Mr. SHEPARD: That is all.

(Signature waived by agreement of counsel.)

91 10:00 a. m., MONDAY, *May* 19, 1902.

Parties met pursuant to notice.
Present: Mr. Meagher. Mr. Shepard.

Mr. MEAGHER: In the People's Gas Light & Coke Company case, if the Master please, I desire to make formal proof showing the amount of taxes paid by the People's Gas Light & Coke — on all its property, including the assessment made on its capital stock for the year 1900.

I have here all of the receipts of the county officers showing payments of all taxes levied.

I have submitted the receipts to Mr. Shepard, and the amount of them is $257,146.74.

Mr. Shepard has agreed that I may, without lumbering the record, without copying the receipts, state simply the amount.

Mr. SHEPARD: I think you should introduce the receipts. We do

not care about copying the original receipts; I think though the Master can verify your calculation from the receipts.

Mr. MEAGHER: The amount is $257,146.74 and I will leave with the Master for the purpose of verification of that amount the original receipts. That is satisfactory?

Mr. SHEPARD: That is satisfactory.

Mr. MEAGHER: The Master of course will preserve them carefully.

The MASTER: They are the original receipts?

Mr. MEAGHER: They are the original receipts for that amount.

Mr. SHEPARD: Receipts of the town collector?

Mr. MEAGHER: They are the receipts of the township collectors.

The MASTER: For 1900?

Mr. MEAGHER: Yes, sir.

92 10.00 a. m., SATURDAY, *May* 24, 1902.

Parties met pursuant to agreement.

Present: Mr. Meagher; Mr. Crawford; E. S. Smith, Assistant Attorney General; Mr. Shepard; Julius A. Johnson, Esq.

Mr. JOHNSON: We desire, if the court please, to offer some testimony this morning as to what was the appropriation, the amount and the items of the appropriation made by the City of Chicago and other municipalities in the year 1900 on which this tax was extended. We desire to show and offer to show

First. Just what was the amount and what were the items of the appropriation bill passed by each municipality in the County that year on which this levy rests.

Then the levying ordinance.

Then we desire to introduce and offer to introduce the warrant or certified copy thereof made by the County Clerk for the collection of this tax of 1900.

This warrant was delivered to the County Treasurer, first to the Town Collectors and then to the County Treasurer or Collector for collection, and we shall offer and do offer to introduce the County Treasurer's books or a summary from the books of the County

93 Treasurer showing the exact amount of the tax from each municipality which was collected in that year, intending thereby to show that each of those municipalities had received already practically and fully more than the tax which they appropriated and levied; in some cases, they have been overpaid; in other cases they have been paid all except a trifling amount; and for that purpose

I first offer in evidence the appropriation ordinance of the City of Chicago making appropriations for its corporate purposes, and for school purposes, and for library purposes, for the year 1900. This ordinance will be found on page 2809 of the Council Proceedings. It was passed on the 4th day of April, 1900, and reads as follows:

Mr. SHEPARD: We object to the introduction in evidence of the ordinance just suggested and to all of the evidence that has been suggested by counsel for complainant for the purpose for which he has stated it was offered. That goes to questions simply as to whether

or not this complainant should be compelled to pay any taxes upon the re-assessment of their property in view of the fact that they claim that the tax levies by the municipalities have been fully or partly met by the taxes paid by other property owners based upon the assessments made in 1900, for 1900.

We object to it in the first place because it is not within
94 the scope of the order of reference, your Honor.

In the second place, because it is immaterial to this hearing or to the final hearing in this case.

The first objection it seems to me should be sufficient for this stage of the proceedings, that is in this hearing on this preliminary matter. The order of reference reads: That the court finds that the complainant should pay an additonal tax and it is ordered that this cause be referred to Henry W. Bishop, one of the Masters in Chancery of this court, for the purpose of ascertaining that preliminary payment. "Said Master is directed to ascertain and determine the amount of said additional taxes upon the following basis:" That I take to be the scope of the inquiry. "The full value of the complainant's capital stock and franchises on April 1st, 1900, shall be ascertained by capitalizing the true net earnings of the complainant, in its fiscal year covering April 1, 1900, upon the ratio or basis of six per cent., that is to say, said full value shall be taken to be 16 2/3 times said net earnings. This full value shall be equalized by deducting 30 per cent. therefrom, and one-fifth of said equalized value so ascertained shall be taken as the equalized value upon which complainant should have paid taxes for the year 1900, and upon said amount or equalized assessed value so ascertained taxes
95 at the true rate of 1900, of not to exceed 8.817 per cent. (exclusive of interest and penalties) shall be computed or extended, and from the amount of the taxes so ascertained shall be subtracted the taxes already paid by complainant for the year 1900," etc.

Mr. CRAWFORD: I submit that the most proper way to deal with this situation is to allow us to go on and make our formal proof and to allow that to be admitted subject to the objection and to let the whole matter go before the court so that the court can determine whether or not the evidence is admissible and relevant and material. It will take but a little while to prove these things.

The MASTER: The Master is of the opinion that the testimony offered for the purpose for which it is offered is incompetent and irrelevant under the order in this case. I, however, do not desire to prevent counsel from having the record made of the evidence, but this is an intimation of my opinion and the effect it will have on my report. I do not anticipate that the defendants will make a cumbrous record, but that it will be merely a short one and, under the circumstances indicated, the evidence may be for the time admitted and a record made.

Mr. SHEPARD: If this testimony is to go in, we feel that we should introduce testimony as to the value of the stocks and bonds of this complainant, and that will prolong this hearing unnecessarily.

96 Mr. SMITH: I suppose it is understood that our objection goes to all the class of evidence Mr. Johnson stated he intended to offer, under the ruling of the Master?

The MASTER: For the purpose for which it is offered.

Mr. JOHNSON: So you need not interpose further objection in order to maintain the objections.

The heading of this ordinance reads: "An Ordinance Making Appropriations for Corporate, School and Public Library Purposes for the Fiscal Year from January 1, 1900, to December 31, 1900.

Be it Ordained by the City Council of the City of Chicago:

SECTION 1. That the following sums, or so much thereof as may be authorized by law and as may be needed, be and the same are hereby appropriated for corporate purposes of the City of Chicago, and for school and also for library purposes, as herein specified, for the fiscal year commencing January 1, 1900, and ending December 31, 1900:"

Then follow the various appropriations making a total for corporate purposes, the amount appropriated for taxes, $6,693,251.60.

Following that there is one subdivision headed "Interest Account," and those items, there are four or five of them which necessarily will be added to make the total amount for corporate purposes, they are as follows:

97

For payment of interest in city indebtedness..	$900,000.00
Add 4½ per cent. for loss in collection of tax..	40,500.00
General Sinking Fund	150,000.00
Add 4½ per cent. for the loss in collection of tax....	6,750.00
River improvement sinking fund.....	60,000.00
Add 4½ per cent. for loss in collection of tax.....	2,700.00
School sinking fund.....	50,000.00
Add 4½ per cent. for loss in collection of tax.....	2,250.00
Sewerage sinking fund.....	104,000.00
Add 4½ per cent. for loss in collection of tax.....	4,680.00

Then under the heading of "The Chicago Public Library" the total appropriation is $263,397.00.

The follows the amount of school taxes, and that is as follows:

New buildings and sites.....	$2,500,000.00	
Parental School buildings	200,000.00	
Add loss and cost of collection.....	160,000.00	
Making a total of.....		$2,860,000.00

for building purposes.

Then under the heading "Educational purposes,"

Educational purposes	$7,455,000.00	
Add loss and cost of collection....	445,000.00	
	7,900,000.00	
Estimated revenue from other sources	750,000.00	
Making a total of.....		$7,150,000.00

98 Indebtedness.

Bonds maturing in 1900	$59,500.00
Interest due in 1900	32,800.00
Bonds maturing in 1901	36,800.00
Interest due in 1901	29,200.00
	$158,300.00
Add loss and cost of collection	7,700.00
Due in settlement with Trustees of that portion of Austin un-annexed on division of property, as per report to be made to City Council	29,206.44
Add loss and cost of collection	1,460.32
Making total school tax appropriation	$10,206,666.76

I also offer in evidence the following ordinance passed by the City Council of the City of Chicago on the 8th day of October, 1900, and found on page 1158 of the Council Reports:

"The following is the ordinance as passed:

Be it ordained by the City Council of the City of Chicago;

SECTION 1. That the following reductions be made in the ordinance making appropriations for corporate, school and public library purposes for the fiscal year from January 1, 1900, to December 31, 1900, and passed April 4, 1900, and that the heads of departments shall furnish to the City Comptroller at the earliest possible moment the details of the following amounts, showing the specific
99 items to be reduced:" "From Fund for Corporate Purposes" a total of $1,647,500.00. "This ordinance shall be in force from and after its passage."

I also offer in evidence the levying ordinance of the City of Chicago for the year 1900, found on page 49 of City Council Proceedings, passed on the 23rd day of April, 1900, reciting "That the following sums, or so much thereof as may be authorized by law and as may be needed, be and the same are hereby appropriated for corporate purposes of the City of Chicago, and for school and also for library purposes, as hereinafter specified, for the fiscal year commencing January 1, 1900, and ending December 31, 1900."

I will not repeat the items, they are the same as in the appropriation ordinanee of April 4.

I now offer in evidence the appropriation ordinance passed for the year 1900 by the County of Cook at its meeting on January 23, 1900, and found on page 157 of its official records for the year 1899-1900, the last clause of which reads as follows: "Total amount to be appropriated," and under that, "Total to be realized by taxation as per resolution $2,481,348.44."

I offer in evidence a certified copy of the tax levy for the year 1900 of the South Park Commissioners in and by which they levied the sum of $611,056.00.

(Said certified copy is in words and figures as follows, to-wit:)

100 *An Ordinance Concerning the Tax Levy for the Current Year.*

Be it ordained by the South Park Commissioners.

SECTION 1. That the South Park Commissioners hereby Specified the sum of Three hundred thousand ($300,000) dollars which this Board estimates as necessary for the payment of the interest on the bonds issued by this Board prior to June 26th, 1885, and for the payment of the principal of such said bonds as are required to be paid during the current year, and that which in additon thereto will be required for the improvement, maintenance and government of the South Park during the current year.

SECTION 2. That the South Park Commissioners in addition to the sum mentioned in the preceding Section, hereby levied a tax of Forty thousand ($40,000) dollars upon the property within its jurisdiction to pay the interest as it falls due on the bonds issued under and in pursuance of an "Act entitled "An Act in Relation to the Worlds Columbian Expositon" approved August 5th, 1890, and also to pay and discharge that portion of the principal of said bonds required to be paid during the current year, and direct the same to be collected in the manner provided for in the Collection of other park taxes.

SECTION 3. That the South Park Commissioners in addi-
101 tion to the sum mentioned in the preceding sections, hereby levies a tax of Three hundred eleven thousand and fifty six ($311,056,*000*) dollars upon the taxable property embraced in its park district under and in pursuance of an act entitled An Act to Enable Park Commissioners to Maintain and Govern Parks, Boulevards, Driveways, Promenades and Pleasure Grounds under their control. Approved April 21, 1899, and ordains and certifies that said amount in addition to the Sums mentioned in the preceding Sections, is necessary for the proper improvement governance and maintenance of the Park property under its control.

SECTION 4. That the sum of Six hundred fifty one thousand and fifty six ($651,056) dollars Specified to be collected as taxes for the current year be, and the same is hereby levied and assessed upon the taxable property of the Town of South Chicago, Hyde Park and Lake, in the County of Cook and State of Illinois, according to the Valuation of the same as made for the purpose of State and County taxations.

SECTION 5. That the South Park Commissioners hereby certifies to the County Clerk of said County the several amounts above specified aggregating six hundred fifty one thousand and fifty six ($651,056) dollars, and the said County Clerk is required to apportion and extend the said sum of Six hundred fifty one thousand and fifty six ($651,056) dollars upon the taxable property in the
102 Towns of South Chicago, Hyde Park and Lake in said County of Cook in the next general tax Warrants for the collection of the State and County taxes in said several towns in the manner provided by law.

SECTION 6. That the Secretary is hereby directed to transmit to the County Clerk of said Cook County on or before the second Tuesday of August, A. D. 1900, a copy of this ordinance duly certified by said secretary as the estimate and certificate required by law.

STATE OF ILLINOIS, *County of Cook, South Park Commissioners, ss:*

I, Edward G. Shumway, Secretary of the South Park Commissioners and Custodian of its records and files, do certify that the foregoing is a true copy of an ordinance adopted by the South Park Commissioners on the 9th day of May, 1900.

In testimony whereof, I have hereunto set my hand and the seal of said South Park Commissioners this Seventh day of June, A. D. 1900.

[SEAL.] EDWARD G. SHUMWAY,
Secretary of the South Park Commissioners.

(Endorsed on the back as follows:)
Filed Jun- 14, 1900, Philip Knopf, County Clerk.

103 STATE OF ILLINOIS, *County of Cook, ss:*

I, Philip Knopf, Clerk of the County Court of Cook County, in the State aforesaid, do hereby certify that the attached statements are a true and correct copy of the Tax Levies for the South Park, West Park, West Chicago Bonded Indebtedness, Lincoln Park, North Chicago and Lincoln Park, Lake View for the year A. D. 1900, all of which appears from the records and files in my office.

In witness whereof, I have hereunto set my hand and affixed the seal of said County Court, at my office, in the City of Chicago, in said County, this 17th day of May, A. D. 1902.

[SEAL.] PHILIP KNOPF,
Clerk of the County Court.

104 Mr. JOHNSON: I offer in evidence the resolution of the Town of West Chicago, dated the 27th day of July, 1900, levying the sum of $60,000.00 for its bonded debt.

I offer in evidence certified copy of the resolution of the supervisor of the Town of Lake View levying the sum of $60,000.00 for the improvement, maintenance and government of Lincoln Park for the year 1900. This ordinance is on October 11, 1900.

Another ordinance of the Town of North Chicago dated October 10th for levying the following items for the maintenance of Lincoln Park. They are as follows:

For the maintenance and improvement of the Park...	$152,250.00
For the payment of interest on the Lake Shore Protection bonds, the sum of.....	25,000.00
For sinking fund for the payment of said Lake Shore Protection bonds the sum of.....	25,000.00
For cost of collection, the sum of.....	1,000.00
For loss on collection the further sum of.....	2,000.00
For deficiency on former collections, losses, the further sum of	2,323.44

I also introduce in evidence an ordinance of the West Chicago Park Commissioners dated the 18th day of July, 1900, levying certain rates per cent. under various laws, all of which are set out in detail, amounting to 11½ mills on the property in the West Town of Chicago for that year.

(Said documents are in words and figures as follows, to-wit:)

105 To Philip Knopf, County Clerk of Cook County, Illinois:

We, the Corporat Authorities of the Town of West Chicago in the County of Cook and State of Illinois, do hereby certify to you that the following amount of money to be raised by taxation is required for the purpose of meeting the bonded indebtedness of the said Town of West Chicago for the ensuing year.

For West Chicago bonded indebtedness..... $60,000.00

In Witness Whereof we — hereunto set our hands and caused the Seal of said Town to be affixed hereto, this twenty-seventh day of July, 1900.

JOHN J. McLAUGHLIN,
Supervisor of the Town of West Chicago.
EDWARD B. WARWICK,
Clerk of the Town of West Chicago.
JOSEPH J. KLEIN,
[SEAL.] *Assessor of the Town of West Chicago.*

(Endorsed on the back as follows:)
Filed Dec. 11, 1900, Philip Knopf, County Clerk.

106 Town of Lake View October 11, 1900, I, Henry Best, Supervisor of the Town of Lake View in the County of Cook and State of Illinois, pursuant to law, do hereby certify that the amount of money to be raised by taxation on property in said Town of Lake View in said County and State, on the assessment for 1900, for the purpose of paying any debt contracted by the Commissioner of Lincoln Park which may fall due during the next year and for the improvement, maintenance and government of said part during the next succeeding year, agreeable to an act of the General Assembly of the State of Illinois Entitled "An Act to fix the boundaries of Lincoln Park and provide for its improvement" approved April 19, 1869, and Amendments thereto, is Sixty thousand ($60,000.00) dollars.

HENRY BEST,
Supervisor Town of Lake View.

I concur in the above levy
STEPHEN A. BERTRAND,
Supervisor Town of North Chicago.

(Endorsed on the back as follows:)
Filed October 10th, 1900, Philip Knopf, County Clerk.

107 TOWN OF NORTH CHICAGO, *October* 10, 1900.

I, Vincent H. Perkins, Supervisor of the Town of North Chicago in the County of Cook and State of Illinois, pursuant to law, do hereby certify that the amount of money to be raised by taxation on property in said Town of North Chicago in said County and State, on the assessment for 1900, for the purpose of paying any debt contracted by the Commissioners of Lincoln Park, which may fall due during the next year and for the improvement, maintenance and government of said Park during the next succeeding year agreeable to an act of the General Assembly of the State of Illinois, entitled An Act to fix the boundaries of Lincoln Park and provide for its improvement" "Approved April 19, 1869, and Amendments thereto, is One hundred and Fifty two thousand two hundred and fifty ($152,250.00) dollars.

And I further certify that a further sum of Twenty five thousand dollars ($25,000.00) is to be raised on said property in said Town, in said County and State for the payment of interest on Shore Protection Bonds.

And I further certify that a further sum of Twenty five thousand dollars ($25,000.00) is to be raised on said property in said Town in said County and State for a Sinking Fund for the payment of said Shore Protection Bonds.

108 And I further certify that a further sum of One thousand dollars ($1000.00) shall be raised on said property, in said Town in said County and State for cost of Collection, and a further sum of Two thousand dollars ($2,000.00) for loss on Collection and a further sum of Two thousand three hundred and twenty three dollars and forty four cents ($2,323.44) for deficiency on former Collection loss.

VINCENT H. PERKINS,
Supervisor Town of North Chicago.

(Endorsed on the back as follows:)
Filed October 10th, A. D. 1900, Philip Knopf, County Clerk.

Whereas, it is necessary that all the taxes now allowed by law for the purpose of governing, maintaining and improving the parks and boulevards now under the control and management of the West Chicago Park Commissioners, and also for the purpose of paying all other necessary and incidental expenses incurred and to be incurred by said Commissioners in and about the same during the *nexed* succeeding year, be levied; therefore, be it

Resolved by the West Chicago Park Commissioners, That there should be duly levied by the proper authorities, lawfully constituted for that purpose, and under the Acts of the General Assembly
109 of the State of Illinois, particularly mentioned in the certificate hereto attached and marked Exhibit "A," a tax of 11½ mills on each dollars worth of property in the Town of West Chicago, according to the valuation of such property, as made for the purpose of State and County Taxes, for the purpose of enabling said

West Chicago Park Commissioners to pay for the government maintenance and improvement of the several parks and boulevards now under the control and management of such Park Commissioners, and for the purpose of enabling said Park Commissioners to pay all other necessary and incidental expenses incurred, and to be incurred in and about and incident to the government, maintenance, management and control of the several parks and boulevards now under the management and control of the *several parks and boulevards now under the management and control of* said Park Commissioners, and also for paying the interest on all bonds and other indebtedness heretofore lawfully incurred and hereafter to be lawfully incurred by said Park Commissioners pursuant to the laws now in force in this state.

Resolved, further by the West Chicago Park Commissioners, That the President and Secretary thereof immediately transmit to the Assessor, Supervisor and Clerk of the Town of West Chicago and to the County Clerk of Cook County, under the seal of this
110 Board, a copy of the foregoing resolutions and the certificate thereto attached.

EXHIBIT "A."

Certificate.

The West Chicago Park Commissioners hereby certify That the several Acts of the General Assembly authorizing the tax estimate by the West Chicago Park Commissioners necessary to be levied for the next ensuing year upon each dollar's worth of the property subject to taxation in the Town of West Chicago, according to the valuation thereof for taxation for State and County purposes, are as follows, namely:

First. ½ mill.—"An Act to amend the charter of the City of Chicago, to create a Board of Park Commissioners and authorize a tax in the Town of West Chicago, and for other purposes," approved and in force February 27, 1869.

Second. 2½ mills.—Also "An Act in regard to the completion, improvement and management of public parks and boulevards and to provide a more efficient remedy for the collection of delinquent assessments" approved May 2, 1873, and amended by an Act approved May 31, 1879 and in force July 1, 1879.

Third. 1 mill.—Also "An Act to enable Park Commissioners to improve, govern and maintain the parks and Boulevards under their control," approved June 6, 1885, and in force July 1, 1885.

111 Fourth. 1½ mills.—Also "An Act to authorize the corporate authorities of towns to issue bonds for the completion and improvement of public parks and boulevards, and to provide a tax for the payment of the same," approved June 12, 1891, and in force July 1, 1891.

Fifth. 1 mill.—Also "An Act to enable Park Commissioners to

maintain and govern parks and boulevards under their control" approved June 17, 1893, and in force July 1, 1893.

Sixth. 1½ mill.—Also "An Act to authorize the corporate authorities of towns to issue bonds for the completion and improvement of parks and boulevards, and to provide a tax for the payment of the same," approved June 21, 1895, and in force July 1, 1895.

Seventh. 2 mills.—Also "An Act to enable Park Commissioners to maintain and govern the parks and boulevards under their control" approved June 17, 1895, and in force July 1, 1895.

Eighth. 1½ mills.—Also "An Act to authorize the corporate authorities of towns to issue bonds for the completion and improvement of public parks and boulevards and to provide a tax for the payment of the same," approved June 9, 1897, and in force July 1, 1897.

On motion of Commissioner Pavlicek seconded by Commissioner Kopf, that the foregoing resolution be adopted the ayes and
112 noes were called as follows:

Commissioner	Kopf	aye
"	Lichtenberger	aye
"	Norden	aye
"	Pavlicek	aye
President	Suddard	aye

5 votes aye; declared carried.
Absent—Commissioners Bloxet and Graham.
Approved,

J. W. SUDDARD, *President.*

STATE OF ILLINOIS, *County of Cook, ss:*

I, Ernest G. Schubert, Secretary for the West Chicago Park Commissioners, do hereby certify that the above and foregoing is a true and correct copy of a resolution adopted by the Board of West Chicago Park Commissioners at an adjourned regular meeting, held Wednesday, July 18, 1900.

In Witness Whereof, I hereunto subscribe my name and affix the Corporate Seal of said West Chicago Park Commissioners this the 20th day of July A. D. 1900.

E. G. SCHUBERT, *Secretary.*

Filed July 28, 1900.

PHILIP KNOPF,
County Clerk.

113 STATE OF ILLINOIS, *County of Cook, ss:*

I, Philip Knopf, Clerk of the County Court of Cook County, in the State aforesaid, do hereby certify that the attached statements are a true and correct copy of the Tax Levies for the South Park, West Park, West Chicago Bonded Indebtedness, Lincoln Park, North Chicago and Lincoln Park, Lake View for the year A. D. 1900, all of which appears from the records and files in my office.

In Witness Whereof, I have hereunto set my hand and affixed the seal of said County Court, at my office, in the City of Chicago, in said County, this 17th day of May A. D. 1902.

PHILIP KNOPF,
Clerk of the County Court.

114 WILLIAM R. BURCKY called as a witness on behalf of the complainant, being first duly sworn, was examined in chief by Mr. Johnson and testified as follows:

Q. Please state your name, residence and occupation.

A. William R. Burcky, Chicago, bookkeeper in the County Treasurer's Office.

Q. How long have you been employed in the County Treasurer's office.

A. About twenty years.

Q. Mr. Burcky, have you made up from the County Treasurer's books for the year 1900 a statement of the total amounts extended on the warrants for each year and the total amounts collected under each warrant for each municipality, and a statement showing the amount uncollected in favor of each municipality from the general tax levy of that year?

A. I have the tax warrant of the 1900 tax, yes, sir.

Q. If you have made up from the County Treasurer's books and brought with you such a statement, you may produce the same. First, I will ask you to state what the amount of taxes is, extended on the warrant for the year 1900 in favor of the City of Chicago?

Mr. SHEPARD: That is objected to as incompetent and immaterial for the reasons already stated.

Q. Mr. Burcky, I will ask you if you have prepared in convenient form a statement of the amount of State, County, Chicago,
115 City, Chicago School, Chicago Library, South Park, Lincoln Park, Lake Shore Protection Fund, West Park, Boulevard and Park, and Sanitary District taxes extended on such warrants, and the amounts uncollected?

A. Yes, sir.

Mr. JOHNSON: Now, I offer to prove that the books show the following; and I also offer in evidence the statement prepared by Mr. Burcky, as follows:

	Amount on warrant for the year 1900.	Uncollected amounts.	Amount collected by town and county collectors.
State Tax.....	$1,552,346.12	53,302.22	1,499,043.90
County Tax	2,456,064.89	83,807.89	2,372,257.00
Chicago City Tax.....	6,953,716.00	262,160.60	6,691,555.40
Chicago School Tax....	10,026,965.82	333,175.73	9,693,790.09
Chicago Library Tax...	271,308.00	9,764.71	261,543.29
South Park Tax..... .	662,187 01	23,498.82	638,688.19
Lincoln Park Tax.....	223,049.69	7,773.86	214,275.83
Lake Shore Pro. Fund Tax..	51,097.22	1,922.08	49,175.14
West Park Tax.....	641,687.87	13,176.47	628,511.40
Boulevard & Park Tax.....	29,833.43	665.82	29,167.61
Sanitary District Tax..	1,374,047.88	59,562.67	1,314,485.21
Total.....	$24,242,303.93	$849,810.87	$23,392,493.06

116 Mr. JOHNSON: I offer to prove by a certified copy of the objection, of the Title Guaranty & Trust Company, a taxpayer of the City of Chicago, made in the County Court of Cook County, in the matter of the application of Samuel B. Raymond, County Treasurer and *ex-officio* County Collector of Cook County, Illinois, for judgment of sale for delinquent taxes for the year 1900 and prior years, with the judgment of the court thereon, and invalidity of 13.05 per cent. of the corporate tax of said City for said year.

Mr. SMITH: I think we should make a further specific objection to that, that it is not in the record in this case or between any parties to this case.

Mr. JOHNSON: Now, if it be understood that in addition to all the evidence having been excluded, I offer to prove the various ordinances and the testimony figured out on Mr. Burcky's slip which has been disallowed——

Mr. SHEPARD: If your Honors please, just to have this record straight, it may be all right now, I understand the ruling of the Masters to be that the evidence sought to be introduced here upon this subject matter this morning is excluded, and the objection to the introduction of that evidence is sustained?

The MASTER: In effect that is the ruling of the Masters.

117 Mr. SHEPARD: And their offer to prove these various things suggested is disallowed?

Mr. SMITH: As I understand, that is not exactly it, I understand Mr. Johnson has offered in evidence what he has read here; we object to it, and the Masters sustain the objection.

The MASTER: Yes, so far as he has offered in evidence, the objection is sustained, and in so far as he has offered to prove certain things his offer is also disallowed.

Mr. CRAWFORD: Now, I ask that the Master shall refer that question to the court or direct that the evidence, the offer be returned with

their reports so that the equity that is before the Master, the proposition, and rejected may be presented to the court as it was presented to the Master. In other words, we have the right to assume to ask the opinion of the court, and the Masters ought to include the evidence, not simply the objections to it; and if not, I shall ask the Masters to suspend this proceeding now and refer the matter to the court.

Mr. SHEPARD: I object to any such proceedings at this late day.

The MASTER: It will go to the court just as it has been offered.

Mr. JOHNSON: I would like to ask Mr. Burcky another
118 question.

WILLIAM R. BURCKY, recalled for further examination by Mr. JOHNSON:

Q. Mr. Burcky, do these figures of the amount extended on the warrant for the year 1900 include any tax, any item except the revenue for that year?

A. They include whatever back taxes have been brought forward from other years, and that would be an amount in the levy.

Q. So the items of back taxes would be a comparatively small one in each case?

A. I think so.

Q. And in the levy you speak of, would there be any excess?

A. In making the extension upon so many different pieces, there would be of course a fractional amount.

Q. It arises from the extension of fractions?

A. Yes, sir.

Q. These amounts which you have on here under the head of "Amount of Warrant for year 1900" those are the amounts which stand on the warrants themselves?

A. Including the back taxes brought forward.

Mr. JOHNSON: I also offer to prove by a certified copy from the County Clerk of Cook County that the exact amount of taxes on the warrant in favor of each municipality for the year 1900, not including back taxes, is as follows:

119 Taxes Extended for 1900.

	Dollars. Cts.
County	2,431,021.95
City of Chicago	6,889,054.40
Chicago School	9,986,580.94
Chicago Public Library	268,291.12
Sanitary District	1,347,566.29
South Park	656,450.68
Lincoln Park (Lake View)	60,270.98
Lincoln Park (North Chicago)	160,037.76
Lake Shore Protection Fund (No. Chic.)	50,853.01
West Park	639,577.27
Boulevard and Park	29,681.81
Town Bonds	64,601.34

STATE OF ILLINOIS, *County of Cook, ss:*

I, Philip Knopf, Clerk of the County Court of Cook County, in the State aforesaid, do hereby certify that the attached statement of the total amount of Taxes Extended on the General Warrants for the year A. D. 1900 for the several purposes mentioned is true and correct all of which appears from the records and files in my office.

120 In Witness Whereof I have hereunto set my hand and affixed the seal of said County Court, at my office in the City of Chicago, in said County, this 17th day of May, A. D. 1902.

(Signed) PHILIP KNOPF,
[SEAL.] *Clerk of the County Court.*

121 The MASTER: The intention of the Master was simply that counsel should offer to prove, and that that offer should be dealt with by the Master. There was a departure from that method of procedu-e so that you could get right along on both the offers to prove and the actual proof.

Mr. JOHNSON: The Master understands I offer to prove each one of these ordinances I have offered in evidence. Of course I don't want any of them left out on account of any misunderstanding.

The MASTER: They are all in.

Mr. CRAWFORD: We shall request the Master in his report to fully embrace the different items of evidence that were tendered and rejected, and also the offer to prove that — were rejected. I think in order to get it into the record in proper shape there should be a formal offer to prove.

Mr. SHEPARD: I think the record shows you have both offered to prove and we have rejected.

Mr. CRAWFORD: Not the whole detailed proposition which was rejected; I think we can get it in the record in proper shape.

Mr. SMITH: You might offer to prove a certain thing and when you offered your evidence it might prove an entirely different thing.

Mr. CRAWFORD: It might but it won't, so you might try us.

122 (Said certified copy of the objection of the Title Guarantee and Trust Company is in words and figures as follows to-wit:)

UNITED STATES OF AMERICA.

STATE OF ILLINOIS, *County of Cook, ss:*

Pleas before Honorable Richard S. Farrand, County Judge of Lee County, presiding as Judge of the County Court of Cook County, at the request and in the absence of the Honorable Orrin N. Carter, sole presiding Judge of the County Court of Cook County, in the State of Illinois, at regular term of said County Court of Cook County, begun and holden at the Court House in the City of Chicago, in said County and State, on the Second Monday, being the 8th day of July in the year of our Lord one thousand nine hundred and one, and of the Independence of the United States of America the one hundred and twenty-sixth.

Present: The Honorable Richard S. Farrand, Acting Judge of the County Court of Cook County. Ernest J. Magerstadt, Sheriff of Cook County.
Attest: PHILIP KNOP, *Clerk.*

Be it remembered that heretofore, to-wit: on the 10th day of July in the year of our Lord one thousand nine hundred and one the same being one of the days of the July Term of the
123 County Court of Cook County, the following objections were filed with the clerk of said Court in words and figures as follows to-wit:

STATE OF ILLINOIS, *County of Cook, ss:*

In the County Court Thereof.

In the Matter of the Application of SAMUEL B. RAYMOND, County Treasurer and *ex-Officio* County Collector of Cook County, Illinois, for Judgment of Sale for Delinquent Taxes for the Year 1900 and Prior Years.

Objection No. —.

Now comes Title Guarantee & Trust Company who is the owner of, and interested in, the real property described in the Schedule attached and made part hereof, by J. D. Adair and Edwin S. Philpot, his attorneys and objects to the rendition of judgment as herein applied for against said premises, for the taxes levied thereon, for the said year, and for cause of objection alleges:

1. That the description of said premises as set forth in the judgment sale, redemption and forfeiture record, and the advertised delinquent list upon which this application for judgment of sale is made, is so defective as to render the assessment thereof, for the purpose of taxation for the year 1900, null and void.

124 2. That said description, as set forth, is so defective as to render the levy of the taxes extended against said premises for the year 1900 null and void.

3. The said description of said lands, as set forth in the judgment sale, redemption and forfeiture record aforesaid, is on this application insufficient to sustain a judgment of sale as applied for.

4. The said description of said land, as contained in the advertised list of delinquents is, on this application insufficient to sustain a judgment of sale as applied for.

5. A plat of said lands purporting to have been filed for record in the recorder's office of Cook County, Illinois, as document number — in Book 164 maps, page 27, entitled Subdivision by the Assessor of South Division of Chicago of Lots 7 & 8 and E. ½ Lot 6, B. 40, Original Town of Chicago is void in this

(*a*) It does not particularly describe and set forth the lots or parcels of land surveyed, as required by the statute then in force.

(*b*) The location of the lots into which said lots were subdivided is not set forth in said plat as required by the statute then in force.

(*c*) No description of the tract or tracts, lot or lots of land out of which said lots in said Assessor's plat were made is given in said plat, as required by the statute then in force.

(*d*) The quantity of land in each of the lots attempted to be made by said assessor, and particularly as to lots — is not given, as required by the statute then in force.

125 (*e*) The said plat was not certified by the County Surveyor, as required by the statute then in force.

(*f*) The said assessor was without legal authority to make said survey and plat because said plat does not show affirmatively that said assessor included in his survey and plat only parcels of land each of which embraced less than one-sixteenth of a section as required by the statute then in force.

(*g*) The said plat is in other respects illegal and insufficient as a platting of said lands for the purposes of taxation.

6. The property has no legal existence for the purposes of taxation.

7. No lien for taxes can attach as against said lands as there described, because they cannot be located and found.

8. The tax levy ordinance passed by the Common Council of the city of Chicago on the 23rd of April A. D. 1900, provides for the levying of taxes for corporate purposes, for the year 1900, in excess of two per cent. (exclusive of the amount levied for the payment of bonded indebtedness and interest thereon) upon the aggregate valuation of all the property within the city of Chicago, subject to taxation therein as the same was equalized for State and County taxes for the preceding year.

9. The County Clerk extended the taxes levied for corporate purposes of the City of Chicago for the year 1900 upon the premises herein objected for, at a rate in excess of two per cent. (exclusive of the amount levied for the payment of bonded indebtedness

126 and interest thereon), upon the aggregate valuation of all property within the City of Chicago subject to taxation therein as the same was equalized for State and County taxes for the preceding year.

10. The appropriations made by the Common Council by ordinance passed April 4, 1900, provide for the application of money to

be raised under the tax levy ordinance aforesaid, to the payment of indebtedness incurred or to be incurred by the City of Chicago, in excess of five per cent. of the value of the taxable property in the City of Chicago, as ascertained by the last assessment for State and County purposes, and the taxes as levied upon the premises herein objected for were extended to include such indebtedness.

11. The Common Council by ordinance passed April 4th, 1900, appropriated money to the payment of indebtedness unlawfully incurred by the City of Chicago, for the payment of which indebtedness the City has levied, and the County Clerk extended a tax upon the premises herein objected for.

12. The appropriations by the City of Chicago by ordinance passed April 4, 1900, and the tax levy based thereon, are in respect to the appropriations of money to pay, and the levy of the tax to raise said money to pay said indebtedness so unlawfully incurred by said City illegally appropriated, and the said taxes are il-
127 legally levied upon the premises herein objected for.

13. The appropriations by the City of Chicago by ordinance passed April 4, 1900, and the tax levy based thereon, provide for the payment of unlawful indebtedness and the unlawful use of money, in this that the appropriations were made for unpaid bills of prior years, for money not to be applied to lawful corporate purposes, for money to pay interest in excess of the interest payable upon the lawful interest bearing indebtedness of the City of Chicago, and the tax to raise the money to pay said appropriations, was illegally levied upon the premises objected for.

14. The appropriations made by the Common Council of the City of Chicago by ordinance passed April 4th, 1900, and the tax levy based thereon, exceed the amount which could be lawfully appropriated and levied, upon the property subject to taxation in the City of Chicago, as the same was assessed and equalized for State and County purposes for the year 1900, and the said tax as levied upon the premises objected for is illegal and void.

15. The taxes levied upon the premises in question for the corporate purpose of the City of Chicago for the year 1900, are in other respects illegal and void.

16. The estimate of the amount of money required by School purposes, for the year 1900, as passed and certified by the Board
128 of Education of the City of Chicago, to the finance Committee of the Common Council of said City, is illegal and void.

17. The appropriation ordinance passed April 4th, 1900, by the Common Council of the City of Chicago, and the levy of the Tax to raise the money to pay said appropriations, are in respect to the appropriations for the School Tax Fund and the levy of the taxes therefor, illegal and void in this.

(*a*) The amount appropriated for building purposes, and the tax levied therefor, exceed two per cent., upon all the taxable property in the City of Chicago, as ascertained by the assessment for State and County taxes for the year 1900.

(*b*) The amount appropriated for educational purposes, and the tax levied therefor, exceed three per cent. upon all the taxable prop-

erty in the City of Chicago, as ascertained by the assessment for State and County taxes for the year 1900.

(*c*) The amount appropriated for the School Sinking Fund, exceeds the amount necessary for said fund and lawfully authorized therefor.

(*d*) The appropriation for building purposes, contains items belonging to educational purposes, and the appropriation for educational purposes contains items for building purposes, and both are illegal and void, and the tax levied to pay the same is illegal and void.

18. The appropriations for school purposes for the year 1900, made by the Common Council of the City of Chicago is in other respects uncertain, illegal and void.

19. The appropriations by the Common Council by ordinance passed April 4th, 1900, for the general sinking fund, are
129 largely in excess of the amount required, and lawfully authorized by law, for that purpose.

20. The valuation of the objector's premises for taxation for the year 1900, is illegal and void.

21. The objector herein hereby offers to pay, not waiving *his* right to an appeal or writ of error, any part of the taxes aforesaid, which may be found by the Court to have been legally assessed and levied.

TITLE GUARANTEE & TRUST COMPANY,
By J. D. ADAIR &
E. S. PHILPOT,
Attorneys for Objector.

Schedule of Property Objected For.

Title Guarantee & Trust Company, Objector.

The South six (6) inches of the East one hundred and eleven and one half (-11½) feet of sub-lot (2) and all of sub-lot three (3) in Assessor's Division of the East half of lot six (6) and all of lots seven (7) and eight (8) in block forty (40), Original Town of Chicago.

130 And afterwards, to-wit: on the 7th day of August, A. D. 1901, the following among other proceedings were had by and before said Court and entered of record, to-wit:

STATE OF ILLINOIS, *County of Cook, ss:*

In the County Court Thereof.

In the Matter of the Application of S. B. RAYMOND, County Treasurer and *ex-Officio* Collector of Cook County, Illinois, for Judgment of Sale for Delinquent Taxes, &c., for 1900 and Prior Years.

General Taxes.

Objection No. 75.

On this day, being one of the days of the July Term, 1901, of this Court, the objections of Title Guarantee & Trust Co., to the application for judgment of sale for delinquent taxes for the year 1900 coming on to be heard, the Court after hearing the evidence and the arguments of counsel, and being fully advised in the premises, finds that the plat entitled:

"Subdivision by the Assessor of South Division of Chicago of lots 7 and 8 and east half of lot 6 Block 40 Original Town of Chicago," recorded Sept. 19, 1866, in Book 164 of Maps page 27, offered in evidence herein does not comply with Sections 52 and 53 of the Act of Feb'y 12, 1853, nor does said plat comply with Sections 17, 18, 19, 20 and 24 of the Revised Statutes of 1845. 131

And the Court further finds from the evidence that the objector is estopped to deny the validity of said Assessor's Plat.

And the Court further finds, that the tax levy ordinance of the City of Chicago, passed April 23rd, 1900, as to the following items is invalid.

Contingent Fund.

For contingent and other expenses, for corporate purposes not otherwise hereinafter expressly provided for, including injury claims.....	$40,000.00

Contingent Fund, Finance Committee.

For payment of petty injury and damage claims, refunds and other contingent expenses ordered, by Finance Committee.....	5,000.00

Civil Service Commission.

For payment of salaries, stationery and sundry expenses, including unpaid bills of 1897, 1898 and 1899	38,000.00

Payment of 1899 Bills.

For unpaid bills of 1899 Department of Electricity...	28,074.34

City Engineer's Office.

For payment of one year's salary to W. D. Hotchkiss, Ass't Engineer, during period of service, May 1, 1898, to May 1, 1899, in United States Army, as per ordinance of City Council, Oct. 17, 1898, page 793 of Proceedings	1,620.00
For restoration and repair of streets (including unpaid bills of 1899	1,433.23

132 Public Buildings.

For unpaid bills of 1898	7,723.58

Seventy Third Street Pumping Station.

Horse Feed for 1899	1,980.00
For miscellaneous work performed for Board of Local Improvements, other departments and outside depositors. This amount to be in addition to any appropriation made for labor, teaming, material, horse hire, and all necessary expenses for sewer repair work, Payments on account actually collected from depositors and taken up as miscellaneous receipts in the general fund	70,000.00

Election Expense.

For the payment of judges and clerks having served at the April, 1899, elections	94,245.00

Fire Department.

For unpaid bills of 1899	18,720.13

House of Correction.

For unpaid bills of 1899	28,032.50

Judgment Account.

For payment of judgments and costs against the City.	50,000.00

Legal Expense.

City Attorney's unpaid bills, 1889	5,857.00

Department of Police.

For deficiency in miscellaneous appropriations of 1899.	53,153.75
" " " " " " 1898.	20,000.00

Sundry Claims.

For payment of unpaid bills of 1898 and claims allowed by City Council for which no appropriation has been made as per schedule certified to City
133 Comptroller by finance committee, and for payment of the claim of J. J. Sullivan, for sidewalk construction in the sum of $591.88..... 29,138.32

That the following item is valid.

Bridge Construction.

For construction of new bridges to replace those at Ninety-fifth street, Clybourn Place, North Avenue, Division street over Canal, Division street over North Branch, South Western Avenue, and Thirty-seventh street (Bridge is to be built at an approximate cost of $200,000.00 each) of which sum only $850,000.00 shall be expended during the year 1900, $1,250,000.00 ..... 850,000.00

Less amount of appropriation not to be expended during 1900..... 400,000.00

And that the item for interest in city indebtedness to the extent of $636,469.00 is valid; and as to the amount of $304,031, is invalid, and that such invalid items amount to 13.05 per cent. of said taxes levied, and that the objections are sustained to the said City tax to the extent of 13.05 % thereof and overruled as to the remainder.

And the Court further finds that the levy by the City of Chicago for the tax for the year 1900 for school purposes is a valid levy, and the taxes are collectible as levied.

It is therefore ordered, adjudged and decreed by the Court, that all objections based upon said Assessors' plat be and the same are hereby overruled.

That the objections to the City taxes aforesaid, be and the same are hereby sustained to the extent of 13.05 per cent. of said taxes, and overruled as to the remainder and that all objections to
134 the school tax aforesaid be and the same are hereby overruled.

It is further ordered that judgments of sale are hereby levied against said premises in favor of the People of the State of Illinois for all of said taxes, except said City tax, and as to said City tax judgment be and the same is hereby entered for 86 95/100 per cent. thereof in favor of the People of the State of Illinois, with penalties and costs severally due hereon for the months of May, June and July, 1900.

And it is ordered by the Court that said premises, or so much thereof as shall be sufficient to satisfy the amount of taxes, penalties and costs annexed to them severally be sold as the law directs.

Whereupon the objector excepted to the finding of the Court and prayed an appeal from said findings to the Supreme Court of the State of Illinois, which appeal is granted upon the objectors filing a bond in the sum of $250 to be approved by the Clerk of this court and bill of exceptions within 30 days, and depositing the amount of said taxes &c. as the law directs.

135 STATE OF ILLINOIS, *County of Cook, ss:*

I, Philip Knopf, Clerk of the County Court of Cook County in the State aforesaid, and keeper of the records and files thereof, do hereby certify that the foregoing is a true and correct copy of Certain objections of Title Guarantee and Trust Company filed with the Clerk of said Court on the 10th day of July, A. D. 1901, and a certain order entered of record August 7th, A. D. 1901, In the matter of the ap-lication Samuel B. Raymond, County Treasurer and *Ex-officio* Collector of Cook County, for Judgment of sale for Delinquent Taxes for 1900 and prior thereto. Objections General No. 75.
all of which appears from the records and files in my office.

In Witness Whereof, I have hereunto set my hand and affixed the seal of said County Court, at my office in the City of Chicago, in said County, this 17th day of May, A. D. 1902.

PHILIP KNOPF,
[SEAL.] *Clerk of the County Court.*

Mr. JOHNSON: That is all I have got to offer.

(Endorsed:) Filed June 9, 1902, Marshall E. Sampsell, Clerk.

136 And on to-wit: the nineteenth day of May, 1906, came the City of Chicago, by its solicitors Mr. James Hamilton Lewis, corporation counsel and Mr. David K. Tone and filed in the clerk's office of said Court its certain Answer in the words and figures following to-wit:

137 *Answer of City of Chicago.*

In the Circuit Court of the United States for the Northern District of Illinois, Eastern Division Thereof.

No. 26168.

PEOPLES GAS LIGHT AND COKE COMPANY
vs.
SAMUEL B. RAYMOND ET AL.

The Answer of the City of Chicago to the Bill of Complaint of the Peoples Gas Light and Coke Company, Complainant, Filed Herein, After Leave of Court for the Purpose First Had and Obtained.

This defendant, now and at all times hereafter saving and reserving unto itself, all benefit and advantage of exception which

can or may be had or taken to the many errors, uncertainties and other imperfections in the said bill of complaint contained, for answer thereunto or to so much and such parts thereof as this defendant is advised it is material or necessary for it to make answer unto, answering, says:

1. This defendant admits that the complainant is a corporation organized and existing under and by virtue of the laws of the State of Illinois and is engaged in the manufacture, sale and distribution of gas in the City of Chicago, with its principal office in the City of Chicago; that the defendant, Maurice Fitzgerald was at the time of filing said bill of complaint, the Town Collector of the Town of South Chicago in the City of Chicago, County of Cook and State of Illinois, and that at the time of the filing of said bill of complaint, the defendant Samuel B. Raymond was the County Treasurer and *ex-officio* County Collector of said Cook County.

138 2. This defendant admits that the defendants, Maurice Fitzgerald and Samuel B. Raymond are charged by law with the duties as set forth in paragraph 2 of complainant's said bill of complaint.

3. This defendant admits that the complainant, after its incorporation, constructed gas works and laid mains for the manufacture and delivery of gas to consumers in the City of Chicago and from thence hitherto remained in and is now engaged in the business of manufacturing, selling and distributing gas to the residents of the City of Chicago.

4. This defendant admits that on the 1st day of April 1901 the complainant had outstanding capital stock of the face value of $28,668,800 and had outstanding bonded indebtedness of $34,496,000, that the real estate owned by complainant was situated in the County of Cook and State of Illinois, and was all assessed by the Board of Assessors and Board of Review of Cook County for the year 1900 on the same basis as other real estate in said County.

5. This defendant further answering, admits that the said complainant, in the 5th paragraph of its bill of complaint has made a substantially correct statement of the law of the State of Illinois in regard to the duties of the local assessing tribunals.

6. This defendant admits that the complainant has in paragraph 6 of said bill of complaint, made a substantially correct statement of the duties of the State Board of Equalization of the State of Illinois, and admits that the taxes were extended by the different County Clerks of the State, substantially as alleged.

7. This defendant denies that the complainant or anyone
139 for it, within the time and in the manner required by law, listed for taxation all its property subject to taxation in said County for the year 1900, but this defendant admits that the local assessing tribunals of the County of Cook made an assessment against complainant of its properties subject to assessment for the year 1900.

8. And this defendant admits that the State Board of Equalization at its regular session for the year 1900, adopted certain rules set forth in Paragraph 8 of complainant's bill of complaint, but

this defendant states and alleges the fact to be that by the judgment of the Circuit Court of Sangamon County and the Supreme Court of the State of Illinois, in a proceeding in which the legality of said alleged rules was put in issue, it was adjudged that the said alleged rules were in conflict with the revenue laws of the State of Illinois and were and are illegal and inoperative, and this defendant states and alleges the fact to be that the rules which were theretofore in force remained in force until on or about the 10th day of December 1901 and the State Board of Equalization adopted certain other rules which were substantially set forth in Paragraph 18 on Pages 32 and 33 of complainant's bill of complaint.

9. This defendant admits that the State Board of Equalization, at its regular session in the year 1900, as required by law, equalized the assessments of the properties assessed by the different local assessing tribunals of the State, and that the total value of all properties owned by complainant on the 1st day of July 1900 in said County and there lawfully assessed was fixed at the sum of $17,079,469 and at the assessed value of $3,415,893; and this defendant admits that the complainant, by its officers, appeared before said State Board of Equalization and that the said Board
140 made an alleged finding of the full value of complainant's capital stock and franchises of the sum of $19,329,465, and of the assessed value of $3,865,893, and deducted from said alleged assessed value the equalized assessed value of complainant's tangible property of $3,415,893, leaving an alleged net assessment of the capital stock and franchise and property of complainant for the year 1900 in excess of said equalized value of tangible property of $450,000.

10. This defendant further answering, says that as to the allegations contained in the 10th paragraph of complainant's bill of complaint concerning the alleged assessments of the capital stock and franchises of other corporations and associations as therein set forth, that they have no knowledge or information concerning the same except as alleged in said bill of complaint, and neither admit nor deny the same, but if the same should become material to the issues herein, it demands strict proof thereof.

11. This defendant further answering says as to the allegations contained in the 11th paragraph of complainant's said bill of complaint concerning the assessments against different properties as set out in said paragraph, that they have no knowledge or information concerning the same, except that contained in said bill of complaint, and neither admit or deny the same, but if the same should become material to the issues herein, it demands strict proof thereof; this defendant denies that any of the properties enumerated in said 11th paragraph were intentionally or deliberately assessed at less than one-fifth of the full value thereof by the local assessors, but this defendant states on information and belief and from such information and belief alleges the fact to be that the different assessing tribunals of the State assessed the different properties subject to assessment by them, at the assessed value of one-
141 fifth of what said assessing tribunals considered and ascertained to be the full fair cash value thereof.

12. This defendant further answering, says that as to the allegations in the 12th paragraph of complainant's bill of complaint, concerning the State Board of Agriculture, it has no knowledge or information concerning the same, except that contained in said bill of complaint and neither admits nor denies the same, but if the same should become material to the issues herein, demands strict proof thereof.

13. This defendant further answering says that as to the allegations in the 13th paragraph of complainant's bill of complaint concerning the assessments of taxable property in the State of Illinois and the County of Cook for the years 1899, 1900 and 1901, that it has no knowledge or information concerning the same, except that contained in said bill of complaint and neither admits nor denies the same, but if the same should become material to the issues herein, demands strict proof thereof.

14. This defendant further answering admits that it is the spirit and intent of the fundamental law of the State of Illinois that every person and corporation shall pay a tax in proportion to the value of the property of such person or corporation and that the assessments of such property should be made in such a manner by the different assessing tribunals as to secure as far as possible, a uniform and equal assessment, but this defendant denies that the property of complainant and a few other corporations was assessed at a higher proportion of its actual fair cash value than other property generally in the State. This defendant further admits that the alleged net assessment of the capital stock and franchise made against complainant is certified to the County Clerk of Cook County 141½ and the taxes are thereafter extended thereon and that the complainant paid the sum of $37,651.50, being the taxes extended against said alleged assessment of capital stock and franchise and also paid the taxes levied against the tangible property of complainant assessed by the local assessing tribunals and further admits on information and belief that no portion of said taxes has ever been tendered back or refunded to the complainant; but this defendant denies that the payment of said sum of $37,651.50 was in full discharge of the proper tax for the year 1900 on the capital stock and franchise of complainant over and above the value of its tangible property; and this defendant further denies that the said alleged assessment made by the State Board of Equalization at its regular session in 1900 was a final and conclusive adjudication of the assessed value of complainant's capital stock and franchise in excess of the equalized assessment of its tangible property, but this defendant states on information and belief and from such information and belief charges the fact to be that the full, fair cash value of complainant's capital stock and franchise on the 1st day of April, 1900 was far in excess of the sum of $63,194,800; that notwithstanding the fair cash value of complainant's capital stock and franchise aforesaid by the said State Board of Equalization and in total disregard of its duty as required by law, wilfully and fraudulently found the full value of complainant's capital stock and franchise as above set forth, and set down an assessment

of the same over and above the assessment of its tangible property by the local assessors as above set forth, which said fraudulent and illegal action on the part of the said State Board of Equalization in relation to the valuation and assessment of complainant's property was had by and with the concurrent fraudulent action of
142 complainant itself, in its failure to properly list and schedule its property for purposes of taxation and furnish the statements required by law, and in its fraudulent representations to the said State Board; and this defendant, further answering, states and alleges the fact to be that the said alleged assessment was and has been long prior to the filing of its bill, held and declared by the Circuit Court of Sangamon County and by the Supreme Court of the State of Illinois, to be null and void and a reassessment of the capital stock and franchise of the said complainant over and above the assessed value of its tangible property was ordered by the Circuit Court of Sangamon County.

15. This defendant further answering, admits that while the said board was in session for the year 1900 a petition for mandamus was filed in the Circuit Court of Sangamon County by the People of the State of Illinois upon the relation of one, Catherine Goggin, a resident of said Cook County, and Robert C. Steele, a resident of Sangamon County. This defendant further says and alleges the fact to be that the proceedings and judgment heretofore referred to, in and by which a new assessment was ordered as aforesaid, were had in said mandamus proceeding. This defendant further states and alleges the fact to be that it was prayed in said petition for mandamus that the said State Board of Equalization be commanded to make a lawful assessment for the year 1900 upon the capital stock and franchise of certain corporations named in said petition, among them being the complainant herein; this defendant further admits that the complainant herein was not made a defendant to said petition, but this defendant states on information and belief and from such information and belief charges the fact to be that this complainant was requested and directed by the said State Board of Equalization
143 to appear in said proceeding on said petition for mandamus by its own solicitors and to make such defense as they might deem advisable, that this complainant did employ counsel, who appeared in said proceedings in said court and also in the appeal taken to the Supreme Court of the State of Illinois and made a defense, which defense was made for the benefit of the complainant herein and the other of said corporations, as fully and effectually as if this complainant had been a party defendant to said petition. This defendant further admits that a final judgment was entered in the Circuit Court of Sangamon County and that an appeal therefrom was prayed to the Supreme Court of the State of Illinois, but this defendant has no knowledge or information concerning the defenses interposed in said proceeding, either in said Circuit Court or in said Supreme Court, except that contained in said bill of complaint, and therefore neither admits nor denies the allegations concerning the same in said bill of complaint contained, but demands strict proof thereof. This defendant further answering, admits that the Supreme

Court of Illinois, on or about the 24th day of October 1901, affirmed said judgment of the said Circuit Court of Sangamon County, and that thereafter a peremptory writ of mandamus was issued by the said Circuit Court of Sangamon County, commanding and directing that a new capital stock assessment be made, the material portion of said writ being substantially set forth on Pages 26 and 27 of complainant's bill of complaint herein.

16. This defendant further answering, admits that between the annual meeting of the State Board of Equalization for the year 1900 and the annual meeting for the year 1901 an election intervened, and that the membership of said board was partly changed, and further admits that while the said State Board was in regular session

144 in 1901, a peremptory writ of mandamus, issued on the judgment of said Sangamon County Circuit Court, was served upon the members thereof. This defendant further says that as to the allegations in said bill of complaint in reference to what motions were made by its counsel or proceedings had before said Board, that they are not informed except by said bill of complaint and neither admit nor deny the same, but if the same should become material to the issues herein, it demands strict proof thereof, but this defendant does admit that thereafter and on or about the 20th day of November 1901 the said State Board of Equalization did make an assessment of the capital stock and franchise of the complainant in the several amounts as set forth on Page 29 of said bill of complaint, but this defendant denies that the said State Board, in making said assessment, was coerced or threatened or that the members thereof considered themselves to be coerced or threatened by the said writ of the said Circuit Court of Sangamon County or that they were acting or considered themselves to be acting under specific instructions, or that they were debarred from the exercise of their legal discretion and denies that said assessment was made without any attempt to equalize the same or without taking into account the assessment of $450,000 previously made for the year 1900.

18. This defendant further answering, admits that the Supreme Court of the State of Illinois held in said mandamus case that the alleged rules adopted by the said Board in the year 1900 were in conflict with the revenue laws of the State of Illinois and were illegal and inoperative and admits that on or about the 10th day of December 1901 the said State Board adopted the rules set forth on pages 32 and 33 of complainant's bill of complaint.

145 19. This defendant further answering, says that as to the allegations in the 19th paragraph of complainant's bill of complaint contained concerning the alleged assessments made by the State Board of Equalization, in the year 1901 that the assessment of the capital stock and franchises of the several companies therein named, except as to complainant, for the year 1900 and for the year 1901, it has no knowledge or information except that contained in said bill of complaint and neither admits nor denies the same, but if the same should become material to the issues herein, it demands strict proof thereof.

20. This defendant further answering, denies that the equalized

assessed valuation of taxable property in the State of Illinois for the years 1899, 1900 and 1901 did not exceed one-fifth of the actual value thereof and denies that the assessments of the different properties in the State made by the local assessing tribunals for said years respectively, were made upon any other basis than one-fifth of what said local assessing tribunals considered and determined to be the actual fair cash value of said property and denies that there ought to have been any reduction for the year 1900 of the value placed upon the capital stock and franchise of complainant, as assessed by the State Board of Equalization, and further denies that in no event would the valuation of the capital stock and franchise of complainant have exceeded the sum of $5,717,067; and this defendant further denies that there was any failure on the part of said State Board of Equalization to equalize the capital stock assessment of complainant for the year 1900, but this defendant states on information and belief and from such information and belief charges the fact to be that the assessment of the capital stock and franchise of complainant for the year 1900, as well as the assessment of all other persons
146 and corporations in the State of Illinois, was assessed by the different tribunals at an assessed valuation of one-fifth of what such assessing tribunals considered and ascertained to be the full fair cash value thereof.

21. This defendant further answering admits that the County Clerk of Cook County extended taxes against said assessment of complainant's capital stock and franchise made in the year 1901 for the year 1900, which taxes amount in the aggregate to the sum of $725,183.17, and this defendant, further answering, admits that the County Clerk of Cook County, also extended on the Collector's Warrants, the further sum of $36,259.06 as interest under the provisions of the revenue laws of the State of Illinois, but denies that said action of the County Clerk in extending said taxes or the interest thereon was or is unlawful or fraudulent and denies that the County Clerk ought to have extended against said assessment for the year 1900 the same tax rate that was extended against the property in Cook County for the year 1901. This defendant further answering, admits that the different tax rates in the County of Cook for the years 1900 and 1901 are substantially as alleged in said bill of complaint.

22. This defendant further answering, admits that the general assembly of the State of Illinois passed a certain law which was approved May 9, 1901, and went into effect July 1, 1901, the substance of which is substantially set forth in Paragraph 22 of complainant's bill of complaint, but this defendant denies that said law had or should have any application to the exension of taxes on complainant's property assessed and taxable for the year 1900.

23. This defendant further answering, admits that the defendant, Maurice Fitzgerald, has demanded of the complainant, pay-
147 ment of the taxes extended against its capital stock and franchise assessment for the year 1900.

24. This defendant further answering, denies that the assessment made by the State Board of Equalization upon the capital stock and franchise of complainant for the year 1900 and the taxes

extended thereon are unjust, oppressive, or confiscatory or impose upon the complainant a greater burden, in proportion to the value of the property of complainant than is borne by other property of the same value in the State of Illinois, and denies that the collection of said tax would be a taking of the property of complainant without due process of law and would be in contravention of the Constitution of the State of Illinois, or of the Constitution of the United States, and denies that it would deny to the complainant the equal protection of the laws and this defendant further answering, denies that the action of the State Board of Equalization in making said assessment was arbitrary, oppressive or in violation of the laws and denies that if carried into effect, it will impose upon complainant an unjust and unequal burden as between itself and other tax payers, and will deny to the complaint equal protection of the laws, or will be a taking of the property of the complainant without due process of law.

25. This defendant further answering denies that the assessment made by the State Board of Equalization of complainant's capital stock and franchises for the year 1900 is oppressive, disproportionate or discriminative or that it was intentionally and fraudulently laid upon the complainant or that the said assessment is illegal, unconstitutional or void. This defendant further denies that the said State Board of Equalization did not assess the capital stock and franchise of other corporations engaged in the same line of
148 business as complainant upon the same basis as complainant's assessment and denies that no assessment of the capital stock and franchise of steam railroads was made by said State Board and denies that said assessment or the assessment of other property in the State was intentionally and purposely made to discriminate against said complainant or in favor of any other property owner.

26. This defendant further answering denies that the said assessment is illegal, unjust and grossly discriminative against complainant or that it is a gross perversion of the rights of the complainant or is a taking of complainant's property without due process of law or that it denies to complainant the equal protection of the laws. And this defendant, as to the other matters alleged in said 26th paragraph of complainant's bill of complaint says that it has no knowledge or information, except that contained in said bill of complaint in regard to the same and neither admits nor denies the same, but demands strict proof thereof.

27. This defendant further answering denies that the net assessment of $450,000 for the year 1900 of complainant's capital stock and franchise was upon a basis fully as high as the assessments against the capital stock and franchise of other corporations in the State of Illinois and denies that complainant should have credit for the taxes voluntarily paid upon said alleged assessment of $450,000.

28. This defendant further answering admits that unless the taxes extended upon the assessment of complainant's capital stock and franchise made in the year 1901 for the year 1900 are collected by the defendant, Maurice Fitzgerald, the defendant Samuel B. Ray-

mond will be called upon under the law to make collection of
149 the same. This defendant further answering denies that the complainant is entitled to any reduction from said taxes either on account of the payment upon the alleged assessment of $450,000 or on account of the interest and penalties added under the provisions of the revenue laws of the State of Illinois and denies that the percentage rate of taxation extended against complainant's capital stock and franchise should not be higher than 5.543 per cent., but this defendant states and alleges the fact to be that the rate of 7.87 per cent. as extended by the County Clerk is the lawful rate. This defendant further answering, denies that the said new capital stock assessment for the year 1901 is illegal, unequal, wrongful and in violation of the Constitution of the United States or of the State of Illinois for any of the reasons set forth on Pages 49, 50 and 51 of complainant's bill of complaint.

29. This defendant further answering states that it is a municipal corporation, duly organized and existing under and by virtue of the laws of the State of Illinois and that under and by virtue of the laws of the State of Illinois it will be the duty of the County Collector and the County Treasurer of Cook County, Illinois, to pay unto this defendant as its share of the taxes so due and owing from the complainant in this cause the sum of $481,654.88, and therefore this defendant shows that it is in equity the owner of and entitled to receive the sum of $364,084.32 out of the taxes now in controversy in this cause.

30. This defendant further answering says that as to the allegations in said bill of complaint contained, not herein specifically answered, admitted or denied, this defendant neither admits nor denies, but demands strict proof, and this defendant further answering denies that the complainant is entitled to relief or any part thereof
149½ in said bill of complaint demanded and prays the same advantage of this answer as if it had pleaded or demurred to the same, and prays to be dismissed with its reasonable costs and charges in this behalf most wrongfully sustained.

CITY OF CHICAGO,
By DAVID K. TONE,
Special Counsel,
JAMES HAMILTON LEWIS,
Corporation Counsel.

(Endorsed:) Filed May 19, 1906, Marshall E. Sampsell, Clerk.

150 And on to-wit: the twenty-fifth day of July, being one of the days of the regular July term of said Court, 1906, in the record of proceedings thereof in said entitled cause before the Hon. Peter S. Grosscup, Circuit Judge, appears the following entry to-wit:

150½ In the Circuit Court of the United States, for the Northern District of Illinois, Eastern Division.

26168.

THE PEOPLES GAS LIGHT AND COKE COMPANY
vs.
MAURICE FITZGERALD, Town Collector of the Town of South Chicago, SAMUEL B. RAYMOND, County Treasurer, and CITY OF CHICAGO.

This cause came on to be further heard at this term, and was argued by counsel, and thereupon, upon consideration thereof, it is ordered that all objections and exceptions to the Master's reports be, and the same are hereby overruled, and that the Master's reports and each of them be, and they are hereby approved and confirmed; and the court finds that all the material allegations of the bill of complaint are sustained by the evidence, and that the equities of the case are with the complainant; and thereupon the court doth order, adjudge and decree as follows:

That the assessment made by the State Board of Equalization of the State of Illinois, at its session in 1901, against the complainant, The Peoples Gas Light and Coke Company, upon its capital stock for the year 1900, (the net amount of said assessment being $9,217,067.00), was made under the coercive influence of a writ of mandamus issued by the Circuit Court of Sangamon County, in the State of Illinois, and did not represent the real or independent judgment of the said State Board of Equalization, and that the assessments made by said State Board of Equalization, at its meeting held in 1901, upon the capital stock of the said complainant, and upon the capital stock of the other corporations named in the writ of mandamus above mentioned, for the year 1900, *was* in fact
151 made upon a materially different basis from that upon which the capital stock of all other corporations of the same class *were* assessed by the said State Board of Equalization for the year 1900, and also upon a basis materially different from that upon which all other taxable property in the State of Illinois was assessed for the year 1900: that said assessment made in 1901 on the capital stock of the complainant for the year 1900, was made under the coercive influence of said mandamus, without the exercise or application of the judgment of the State Board of Equalization, or the members thereof, to the ascertainment of the value of said capital stock, and without the State Board of Equalization, either in fact or in form, taking into consideration the basis upon which all other taxable property in the State of Illinois was assessed and taxed for the year 1900, and without in fact or in form equalizing the valuation or assessment of the capital stock of said complainant for the year 1900 with all of any of the assessments made upon the other taxable property in the State of Illinois for the year 1900, with the result that the said assessment on the capital stock of complainant,

made in the year 1901 for the year 1900, was made on a much higher basis than that upon which the other taxable property of the State of Illinois was assessed and taxed for the year 1900; and that said assessment upon said capital stock for the year 1900 was and is unjust and inequitable: that the making of said assessment as aforesaid in 1901, upon the capital stock of the said complainant, and the extension of taxes thereon, and the attempt to enforce the payment of such taxes so extended, from complainant, was and is a violation of the 14th amendment to the Constitution of the United States, and that the attempt to enforce the collection from complainant of the taxes extended on said re-assessment will, unless restrained, result in a multiplicity of suits, and in irreparable injury to complainant.

An order was entered herein on the 28th day of June, 1902, as a condition precedent to the granting of the temporary relief
152 prayed for in the bill of complaint herein, that complainant should pay, in addition to the tax already paid upon the first or original capital stock assessment for the year 1900, the further sum of $279,997.48, making a total capital stock tax to be paid by complainant for the year 1900 of $317,648.98, which is found and decreed by the court to be all that complainant should equitably be required to pay as a capital stock tax for the year 1900. Said additional sum of $279,997.48 has been paid by complainant to the county treasurer of Cook County, in compliance with said order, making the total amount paid by complainant, as taxes upon its capital stock for the year 1900, the said sum of $317,648.98.

It is therefore further ordered, adjudged and decreed that the said assessment of $9,217,067.00 on the capital stock of complainant, made by the State Board of Equalization in the year 1901 for the year 1900, and all taxes levied and extended thereon, and now spread upon the books of the tax collecting agencies in the City of Chicago, County of Cook and State of Illinois, for collection be and they are, and each of them is, illegal, null and void, and that the defendant, Maurice Fitzgerald, Town Collector of the Town of South Chicago, and his successor and successors in office, as such Town Collector, and the defendant, Samuel B. Raymond, County Treasurer of Cook County, Illinois, and *ex-officio* County Collector of said County, and his successor and successors in office, as such County Treasurer and *ex-officio* County Collector, and the defendant, the City of Chicago, and each of them, and each and every of their respective agents, deputies, servants, attorneys and representatives be, and they are, and each of them is, hereby perpetually enjoined and restrained from in anywise levying or collecting, or in any manner attempting, directly or indirectly, to levy or collect, or to enforce against the complainant, or against any of its property, said tax or taxes, or any or either of them, or any part thereof.

It is further ordered, adjudged and decreed that the costs of this cause be taxed against complainant.

153 And on to-wit: the tenth day of August, being one of the days of the regular July term of said Court, 1906, in the

record of proceedings thereof in said entitled cause before the Hon. Peter S. Grosscup, Circuit Judge appears as of July twenty-fifth the following entry to-wit:

26168.

PEOPLES GAS LIGHT AND COKE COMPANY
vs.
SAMUEL B. RAYMOND ET AL.

This cause this day coming on to be heard after due notice to all the parties to this cause; and it appearing to the Court that prior to the entry of the final decree in this cause on July 25th, 1906, the term of office of Samuel B. Raymond, as County Collector, had expired, and that John J. Hanberg had been duly elected and qualified as his successor in office; and it appearing that prior to the entry of the final decree herein, said John J. Hanberg, as the successor in office of said Samuel B. Raymond, had entered his appearance in this cause and was made a party defendant and had adopted all the pleadings and proceedings of the other defendants in this cause and had agreed not to introduce any new evidence.

Now it is hereby Ordered that the final decree entered herein on the 25th day of July, 1906, be so amended as to insert after the words "City of Chicago" on page 3, being in the 10th line from the bottom, the following words:—"And John J. Hanberg, successor in office of said Samuel B. Raymond, as County Treasurer of Cook
154 County, Illinois, and *ex-officio* County Collector of Cook County, Illinois, and *ex-officio* Town Collector of the various Towns within the City of Chicago, and his successor and successors in office" this order entered *nunc pro tunc* as of July 25th, 1906.

155 And on to-wit: the tenth day of August, 1906, there was filed in the clerk's office of said Court in said entitled cause a certain Certificate in words and figures following to-wit:

Certificate.

In the Circuit Court of the United States, Northern District of Illinois.

No. 26168.

THE PEOPLES GAS LIGHT AND COKE COMPANY, Complainant,
vs.
SAMUEL B. RAYMOND, County Collector, ET AL., Defendants.

Be it remembered that on the final hearing of the above entitled cause, before his Honor Judge Grosscup, on the 5th day of June, 1906, counsel for the City of Chicago made and insisted upon before the Court each and every objection in reference to the admission and exclusion of evidence made by the defendants or any of them before

the Master, as shown in the various Masters' reports now on file in this cause, and said objections and each of them were overruled by the Court, to which rulings and to each of them counsel for the City of Chicago excepted; and counsel for the City of Chicago also objected to the Court hearing or considering any oral evidence for the purpose of explaining, varying or contradicting the official acts, records and proceedings of the said Board of Equalization of the State of Illinois for the years 1900 and 1901 in reference to the capital stock assessment levied by the State Board of Equalization of the State of Illinois against the complainant in the year 1901 as and for the year 1900.

Said objection was overruled by the Court, to which ruling
156 counsel for the City of Chicago excepted.

The court basing its decree not upon the findings of fact by the Master but upon the evidence contained in the Master's report.

P. S. GROSSCUP.

(Endorsed:) Filed Aug. 10, 1906. Marshall E. Sampsell, Clerk.

157 And on to-wit: the tenth day of August, 1906, came the defendants in said entitled cause by their solicitors and filed in the clerk's office of said Court their certain Petition for Appeal in words and figures following to-wit:

158 In the Circuit Court of the United States, Northern District of Illinois, Eastern Division.

No. 26168.

THE PEOPLES GAS LIGHT AND COKE COMPANY, Complainant,

vs.

SAMUEL B. RAYMOND, County Treasurer, Cook County, Illinois, and *ex-officio* County Collector of Cook County, Illinois, and JOHN J. HANBERG, His Successor in Office as County Treasurer of Cook County, Illinois, and *ex-officio* County Collector of Cook County, Illinois, and *ex-officio* Town Collector of the Town of South Chicago, and MORRIS FITZGERALD, Town Collector of the Town of South Chicago, and THE CITY OF CHICAGO, Defendants.

Petition for Appeal.

The above named defendants, Samuel B. Raymond, County Treasurer, Cook County, Illinois, and *ex-officio* County Collector of Cook County, Illinois, and John J. Hanberg, his successor in office as County Treasurer of Cook County Illinois, and *ex-officio* County Collector of Cook County, Illinois, and *ex-officio* Town Collector of the Town of South Chicago, and Morris Fitzgerald, Town Collector of the Town od South Chicago, and The City of Chicago, and each of them, believing themselves to be aggri-ved by
159 the order and decree of this Court, made and entered on the 25th day of July, A. D. 1906, whereby the said defendants

and each of them and each and every of the officers, agents and employés of the said defendants are perpetually enjoined and restrained from in any wise levying or collecting or in any manner attempting to levy or collect or to enforce against the complainant the taxes or any or either of them, made and levied by the State Board of Equalization in the year 1901 for the year 1900, said taxes amounting to the sum of $9,217,067,—all of which appears of record in said Court and which decree is more fully set forth in the record in this cause, and the said above named defendants hereby jointly and severally pray an appeal from said order and decree to the Supreme Court of the United States.

HARRY A. LEWIS,
WILLIAM F. STRUCKMANN,
JAMES HAMILTON LEWIS, AND
DAVID K. TONE,
Solicitors for the Above Named Defendants.

The above appeal is allowed, and the appeal bond is fixed at $200, said bond to be approved by the Clerk of this Court.

P. S. GROSSCUP.

(Endorsed:) Filed August 10, 1906, Marshall E. Sampsell, Clerk.

160 And on to-wit: the tenth day of August, 1906, come the defendants in said entitled cause by their solicitors and filed in the clerk's office of said Court their certain assignment of errors in words and figures following to-wit:

161 In the Circuit Court of the United States, Northern District of Illinois, Eastern Division.

No. 26168.

THE PEOPLES GAS LIGHT AND COKE COMPANY, Complainant,
vs.
SAMUEL B. RAYMOND, County Treasurer, Cook County, Illinois, and *ex-officio* County Collector, Cook County, Illinois, and JOHN J. HANBERG, His Successor in Office as County Treasurer of Cook County, Illinois, and *ex-officio* County Collector of Cook County, Illinois, and *ex-officio* Town Collector of the Town of South Chicago, and MORRIS FITZGERALD, Town Collector of the Town of South Chicago, and THE CITY OF CHICAGO, Defendants.

Assignment of Errors.

The above named defendants, Samuel B. Raymond, County Treasurer, Cook County, Illinois, and *ex-officio* County Collector, Cook County, Illinois, and John J. Hanberg, his successor in office as County Treasurer of Cook County, Illinois, and *ex-officio* County Collector of Cook County, Illinois, and *ex-officio* Town Collector of

the Town of South Chicago, and Morris Fitzgerald, Town Collector of the Town of South Chicago, and The City of Chicago, jointly and each of them separately and severally show that in the record and proceedings in the above entitled cause and in the decree made herein July 25th, 1906, manifest error has occurred, to the prejudice of these defendants and each of them, especially in the following particulars:

First. The said Circuit Court erred in failing and refusing to dismiss this cause for want of jurisdiction in a Federal Court, appearing upon the face of complainant's bill of complaint.

Second. The said Circuit Court erred in failing to dismiss complainant's bill of complaint for want of jurisdiction because the undisputed evidence in this record shows that a Circuit Court of the United States is without jurisdiction to hear and determine the matters and things charged in complainant's bill.

Third. The said Circuit Court erred in refusing to hold that the allegations of the complainant's bill of complaint show that the complainant has not been denied by the State of Illinois or its officers, any right, privilege or immunity guaranteed to the complainant by the Fourteenth Amendment to the Constitution of the United States.

162 Fourth. The said Circuit Court erred in refusing to hold that the allegations of complainant's bill of complaint show that the complainant has not been deprived of its property without due process of law, in violation of the Constitution of the United States.

Fifth. The said Circuit Court erred in refusing to hold that the State of Illinois had not denied to the complainant the equal protection of its laws within its jurisdiction.

Sixth. The said Circuit Court erred in refusing to find that the sole grievance complained of in complainant's bill of complainant is that the officers of the State of Illinois charged with the duty of making a fair and equal assessment of the complainant's capital stock, have made an assessment that is unfair and unequal, contrary to and in violation of the Constitution and the Laws of the State of Illinois, and said Circuit Court likewise erred in assuming and retaining jurisdiction of this cause, when, upon the face of complainant's bill of complaint, it appears that the said Circuit Court was without jurisdiction.

Seventh. The said Circuit Court erred in refusing to hold that inasmuch as the complainant and defendants were all citizens of and residents of the State of Illinois, a Federal Court had no jurisdiction in this cause to hear and determine the fairness, equality or regularity of the assessment made against the complainant, and the said Circuit Court erred in refusing to dismiss this cause for want of jurisdiction.

163 Eighth. The said Circuit Court erred in entering upon a calculation as to the amount of taxes to be paid by the complainant upon its capital stock for the year 1900 and in finding and determining the amount of said taxes, for said Circuit Court should have held that the determination as to the amount of taxes to be

paid by all persons within the State of Illinois was a matter exclusively committed by the laws of Illinois to the assessing officers of the State of Illinois.

Ninth. The said Circuit Court erred in overruling the objections and exceptions and each and every of said objections and each and every of said exceptions to the said Masters' Reports and to each of them.

Tenth. The said Circuit Court erred in approving and confirming the Masters' reports and each of them, filed in this cause.

Eleventh. The said Circuit Court erred in failing and refusing to sustain the objections and each and every of the same filed by the defendants to said Masters' Reports and to each of said reports.

Twelfth. The said Circuit Court erred in finding that all of the material allegations of the bill of complaint are sustained by the evidence and likewise in finding that the equities of the case are with the complainant.

Thirteenth. The said Circuit Court erred in failing to find that the material allegations of the bill of complaint in this cause have not been proved by any competent evidence.

164 Fourteenth. The said Circuit Court erred in finding that the assessment made by the State Board of Equalization of the State of Illinois at its session in 1901 against the complainant, upon its capital stock for the year 1900, amounting to $9,217,067, was made under the coercive influence of a Writ of Mandamus issued by the Circuit Court of Sangamon County, in the State of Illinois, and did not represent the real or independent judgment of the said State Board of Equalization.

Fifteenth. The said Circuit Court erred in failing and refusing to find that the assessment, amounting to $9,217,067 made by the State Board of Equalization of the State of Illinois at its session in 1901 against the complainant, upon its capital stock for the year 1900, was made by the said State Board of Equalization in the exercise of its own judgment and upon its official responsibility.

Sixteenth. The said Circuit Court erred in finding that the assessment made by the State Board of Equalization at its meeting, held in 1901, upon the capital stock of said complainant and upon the capital stock of the other corporations for the year 1900, named in the writ of mandamus, issuing from the Circuit Court of Sangamon County, Illinois, were in fact made upon a materially different basis from that upon which the capital stock of all other corporations of the same class were assessed by the State Board of Equalization for the year 1900, and also upon a basis materially different from that upon which other taxable property in the State of Illinois was assessed for the year 1900.

165 Seventeenth. The said Circuit Court erred in refusing and failing to find that the only competent evidence contained in the record in this cause showed that the assessments made by the State Board of Equalization at its meeting held in 1901 upon the capital stock of said complainant, and upon the capital stock of the other corporations for the year 1900, namely in the writ of mandamus issuing from the Circuit Court of Sangamon County,

Illinois, were in fact made upon the same or a similiar basis as that upon which the capital stock of all other corporations of the same class were assessed by the State Board of Equalization for the year 1900, and also that said assessments as to each of said corporations were made upon the same or a similar basis upon which all other taxable property in the State of Illinois was assessed for the year 1900.

Eighteenth. The said Circuit Court erred in finding that said assessment made in 1901 on the capital stock of complainant, was made under coercive influence of a writ of mandamus, issuing from the Circuit Court of Sangamon County, Illinois, without the exercise or application of the judgment of the State Board of Equalization or the members thereof, to the ascertainment of the value of said capital stock and without the State Board of Equalization, either in fact or in form, taking into consideration, the basis upon which all other taxable property in the State of Illinois was assessed and taxed for the year 1900 and without in fact or in form equalizing the valuation or assessment of the capital stock of said complainant for the year 1900 with all or any of the assessments made upon the other taxable property in the State of Illinois for
166 the year 1900, with the result that said assessment made on the capital stock of the complainant, in the year 1901 for the year 1900, was made on a much higher basis than that upon which the other taxable property of the State of Illinois was assessed and taxed for the year 1900.

Nineteenth. The said Circuit Court erred in refusing and failing to find that the assessment made in the year 1901 on the capital stock of the complainant, was made without any coercion and in the exercise of the independent judgment of the State Board of Equalization and the members thereof, for the purpose of ascertaining the fair value of the capital stock of said complainant, and that said assessment was obtained and resulted from the said State Board of Equalization equalizing the valuation or assessment of the capital stock of said complainant for the year 1900 with all of the assessments made upon the other taxable property in the State of Illinois, and that the assessment so arrived at was just and fair to the said complainant.

Twentieth. The said Circuit Court erred in finding that the making of the assessment for the year 1900 upon the capital stock of said complainant, and the extension of the taxes thereon, and the attempt to enforce the payment of such taxes so extended, from complainant, was and is a violation of the Fourteenth Amendment to the Constitution of the United States.

Twenty-first. The said Circuit Court erred in entering the order on the 28th day of June, 1902 to the effect that the complainant should pay, in addition to the tax already paid, upon the first or original capital stock assessment for the year 1900, the further
167 sum of $279,997.48, making a total capital stock tax to be paid by the complainant for the year 1900 of $317,648.98, which was found and decreed by the court to be all that complainant should equitably be required to pay as a capital stock tax for the

year 1900, for said Circuit Court should have found, if it had jurisdiction of this cause and of the parties hereto, that the complainant should be required to pay the aggregate amount of all taxes assessed against it in the year 1901 as and for the year 1900 upon its capital stock, aggregating $9,217,067.

Twenty-second. The said Circuit Court erred in ordering, adjudging and decreeing that the assessment of $9,217,067 on the capital stock of the complainant, made by the State Board of Equalization in the year 1901 for the year 1900 and the taxes levied and extended thereon and now spread upon the books of the tax collecting agencies in the City of Chicago, County of Cook and State of Illinois for collection, are, and each of them is, illegal, null and void, and that the defendants, Samuel B. Raymond County Treasurer of Cook County, Illinois, and *ex-officio* County Collector of Cook County, Illinois, and Maurice Fitzgerald Collector of the Town of South Chicago, and John J. Hanberg, his successor as County Treasurer of Cook County, Illinois, and *ex-officio* County Collector of said County and *ex-officio* Town Collector of the Town of South Chicago in said County and his successor and successors in office as such County Treasurer and *ex-officio* County Collector and *ex-officio* Town Collector of said Town of South Chicago, and the defendant Maurice Fitzgerald Town Collector of the Town of South Chicago, and the defendant, the City of Chicago, and each of them and each and every of their respective agents, deputies, servants, attorneys and representatives, be and are perpetually enjoined and restrained from in anywise levying or collecting or in any manner attempting, directly or indirectly, to levy or collect or to enforce against the complainant or against any of its property, the said tax or taxes or any or either of them or any part thereof.

168 Twenty-third. The said Circuit Court erred in admitting and receiving in evidence over the objection and exception of defendants' counsel, the following testimony of Samuel M. Barnes, a member of the State Board of Equalization, of the State of Illinois for the years 1900 and 1901:

I heard the members of the State Board of Equalization discuss the remarks of the court on the application for an extension of time to make return to the writ of mandamus. My recollection of one remarrk that I heard was that it was a mere question of the Board's getting their pencils and getting to work and they ought to do it. I heard one of the Board say that the court was very vituperative in this matter. I think it was either Mr. Schaefer or Mr. Hopkins of the Committee on the Board who was over there listening to the court. The impression I got was very strongly fixed in my mind and it was that his attitude was intensely hostile to the Board and I was told by those who heard him that it was in the shape of a roast from start to finish as far as his manner was concerned. Of course, I cannot just quote the language he used, but rather his manner I was told was vituperative, absolutely so. I was told this by members of the State Board of Equalization who were present and heard the remarks of the Judge. The reassessment as we determined it, was made with a view to satisfying the court, the order of the court. We

made no deduction, if I remember rightly, on account of that all of these Companies but two had in 1900 been assessed upon their capital stock. We did not take into consideration the fact, if it was a fact that other property in the State had not been assessed at the maximum more than 70 per cent. of its value. The court, in his discussion, gave an illustration of the manner in which the assessment should be made and I think he made an example of the Gas Company here; in any event one of the companies he made an example of that and in that example he said just how the assessment
169 should be made and as this was an order of the court, we followed that example that he gave in a general way, for all these assessments. Mr. Smith and Mr. Greenacre furnished these tables (referring to complainant's Exhibit A, 10/23/03) said document being a compilation of the value of the capital stock of said Companies, prepared by Miss Goggin and Miss Haley, as members of the Teachers Federation. Our desire in making this reassessment was in order to satisfy the Circuit Court of Sangamon Company, because it was not my judgment that it was a proper assessment. The general idea seemed to be with the committee on capital stock that the action of the committee was dictated by the court. It was discussed between the committee on capital stock at about the time the reassessment was reported to the Board and the first object to be attained was to satisfy the court. The assessments that were made subsequent to this assessment of 1900 were based on what we believed to be the law and in a general way on the judgment of the members, that is on the real values. The assessment for 1901 we regarded as representing our real judgment and the other we did to satisfy the court. The restraining order issued by the court was dissolved on the 22nd of November and I think it was a very short time after that on that day that we made our return to the writ.

Twenty-fourth. The said Circuit Court erred in admitting and receiving in evidence, over the objection and exception of defendants' counsel, the following testimony of Frank P. Martin, a member of the State Board of Equalization of the State of Illinois for the years 1900 and 1901:

I remember making the reassessment on or about the 22nd day of November, when a writ of mandamus issued from the Circuit Court of Sangamon County, early in November, and that an application was made to the Circuit Court of Sangamon County for an extension of time within which to make the reassessment, and it was denied. I have read in the examination of Dr. Barnes what
170 purport to be the remarks of Judge Thompson on that occasion. Shortly after those remarks were made by the Judge, they were repeated to me and I was familiar with them. A statement was also made, purporting to have come from Judge Thompson that we had better get our candles and lamps and begin to get busy. We felt, when we made the assessment, that we were bound absolutely by the mandate of the court and the deliberations of the court. I felt at the time that the values ought to be made on the information furnished by Mr. Greenacre from the School Teachers. The capital stock committee, of which I was a member, relied for information

in fixing the values in the re-assessment in relation to the complainant companies, upon the information furnished by the teachers, being complainant's Exhibit A. We made this assessment because I thought I wanted to satisfy the court and what the court wanted was to satisfy Mr. Greenacre and the teachers. I was not taking my own judgment in the matter at all. I did not take into consideration what other property throughout the State was valued at. I did not take into consideration what the capital stocks of these companies had been assessed at for the year 1900. As far as I remember no deduction was made in fixing the assessed value of the capital stock of these companies on the reassessment on account of property throughout the State on the average, personal and real, not having been returned at full value for assessment at its full value. In the year 1900 and other previous years the State Board of Equalization did not, I think, treat the bonded indebtedness of corporations as assets, and that was so in respect to all corporations throughout the State.

Twenty-fifth. The said Circuit Court erred in admitting and receiving in evidence, over the objection and exception of defendants' counsel the following testimony of John S. Cruttenden, a member of the Board of Equalization of the State of Illinois for the years 1900 and 1901:

171 "I remember the mandamus suit brought on the relation of Catherine Goggin and R. S. Steele against the State Board of Equalization. The writ of Mandamus was issued from the Circuit Court in Sangamon County, on or about the second of November, 1901, and I remember that an application was made on or about the 9th or 10th of November, to the Circuit Court of said County, for an extension of time within which to comply with the order as expressed in the writ, and I heard read what purported to be the remarks of Judge Thompson made on that application. The information upon which we based the figures that we made for the reassessment of 1900, was practically based upon the documents laid before us by the Teachers, known as Exhibit B. Our idea in making this assessment, was to comply with the request of the court. The assessment, as finally reached by us, upon these companies named as complainants in these cases, did not represent what we considered to be the value of their capital stock for the purposes of assessment; not according to the information that we gained afterwards. We supposed from this document, that these teachers had pretty reliable information on the values, and we took those figures almost all the way through. We concluded to take the example of the Peoples Gas Light and Coke Company cited by the court for all the cases, thinking that we would satisfy the court. It was the feeling of the Board that if we did not comply with the idea of the court, whether right or wrong, we would all go to jail. I know I had people calling at my office at Springfield and Chicago, at my offices, and informing me that it would be an unpleasant thing to go to jail about this matter. In making this report which was adopted by the Board, we did not make any deduction on account of the assessment against the capital stock that had been made against these companies. We

did not make any deduction, because of the fact that other
172 property in the State had not been assessed, to its full value. We proceeded upon the theory that it was absolutely void; that they were not entitled to any credit, and we would not take any chances of punishment for contempt by giving them credit. You told us (Referring to counsel for Union Traction Company) that the Union Traction Company controlled the stock of the Underlying Companies; but we did not give any credit in the re-assessment. We assessed the whole stock of the other Company, too, upon the advice of Mr. Greenacre. In the case of the re-assessment of the Chicago Edison Company for 1900, we made no reduction on account of the Capital stock invested in patent rights. Prior to the year 1900, they equalized and endeavored to make the assessment upon the same basis as to values as property throughout the state was assessed.

Twenty-sixth. The said Circuit Court erred in admitting and receiving in evidence over the objection and exœption of defendants' counsel the testimony of Louis D. Hirsheimer, a member of the State Board of Equalization of the State of Illinois, for the year 1901:

"I remember that about the 2nd of November, 1901, a writ of mandamus issued against the members of the State Board of Equalization, returnable November, 22nd, I believe, and that an application was made by the members of the State Board for an extension of time, within which to comply with the order of the court as expressed in its writ. The next morning I heard what purported to be extracts from the remarks of Judge Thompson, in rendering his decision on the application for an extension. The remarks were freely discussed at the hotel by members of the Board, and I was informed that he was very much displeased by the application for an extension even being asked; and finally gave them the ultimatum of making an assessment, or of being punished for contempt
173 of court. I heard him say that all that was necessary was a lead pencil and a little time, that all it required was the sharpening of a lead pencil and getting to work. The printed form furnished by Miss Haley and Miss Goggin were principally relied upon in making up the figures. Before our report was made I talked with Mr. Smith. Mr. Greenacre stated that the report was all right. I felt that anything Mr. Greenacre would recommend the court would perhaps consider to some extent as right. I heard him say that whatever the views of any member of the Committee as to values to be taken the opinion laid down there was what it would be, or something to that effect. In making up the report, I did not take into consideration the fact that there had been assessments made on all of the complainant companies, except two. In making up the report as to the values of these properties, I did not make any deduction whatever, in order to equalize the values of these properties with the values of other property in the State. We made an application for an extension of time to make these returns, in order to have more time to consider, it, in arriving at our conclusion; but when that was denied, we had to make our report on such informa-

tion as we had. In making these figures, to a very large extent, we acted upon the wishes of the Teachers' attorney and the Court's instructions.

In the matter of the Chicago Edison Company's assessment for the year 1900, the capital stock was $6,000,000. That was assessed at 125, and a credit of $725,000 given for United States Patents, leaving $6,775,000. Taking the debt at par, $5,508,000, making a total value of $12,283,000 on a basis of 70 per cent.; making $8,598,100; tangible property, $4,909,165, leaving 3,688,935, full value of the capital stock; one fifth value $737,787.

174 Twenty-seventh. The said Circuit Court erred in admitting and receiving in evidence over the objection and exception of defendants' counsel, the testimony of William M. Flook, as follows:

I made certain mathematical calculations and deductions, which are set forth in "Flook Exhibit A 11/25/03, H. W. B." That Exhibit was compiled, in a general way, from the collection and compilation of statistics and figures from the records of the State Board of Equalization, from the time it first commenced to make reports, in 1873, down to 1900, and from the report of the Railroad and Warehouse Commission of the State of Illinois, for 1900, and from the report of the Railroad and Warehouse Commission of the State of Illinois for 1900, and from Brown's Directory of Gas Companies for the year 1900. I have reduced the result of that work to the form of a report or statement. This statement has been made from the source I have now described (referring to said Flook Exhibit A.)

Twenty-eighth. The said Circuit Court erred in admitting and receiving in evidence, over the objection and exception of defendants' counsel, the document shown as "Flook Exhibit A, 11/25/03 H. W. B." as follows:

"From the report of the Railroad and Warehouse Commission for the year 1900 (pp. lxxx*ll*–lxxxv*ll*) it appears that there were in that year 116 railroad companies operating within the state of Illinois that the total mileage of main line and branches owned by said railroad companies was 47,685.37*;* miles; that of such total mileage so owned by said railroad companies, 10,817.10 miles of main line and branches were located in Illinois; that 1,548.71 miles of second, third and fourth additional main tracks were so owned and located in Illinois; that 4,248.86 miles of yards, tracks, sidings and spurs were so owned and located in Illinois; that 164.61 miles of industrial tracks were so owned and located in Illinois, and that 103.52

175 miles of new line building during the year 1900, exclusive of side tracks, were so owned and located in Illinois.

From said report it further appears (pp. lxxxV*ll*–Xc*lll*) that the total amount of outstanding of capital stock of said railroad companies was $1,401,508,589.; that the amount of capital stock per mile of line was $28,867.; that the total amount outstanding of bonded debt of said railroad companies was $1,667,190,160.; and that the amount of funded debt per mile of line was $34,305.

Assuming that the value of the railroad property in this state was as great per mile of road as that out side of the state, and multi-

plying the mileage of the main lines and branches in Illinois (10,817 miles) by the amount of capital stock per mile of line ($28,867.), it appears that the capital stock of said 116 railroad companies represented by the mileage of main lines and branches owned by said railroad companies in this state was $312,254,339.

Upon the same basis, multiplying the mileage of the main lines and branches in Illinois (10,817 miles) by the amount of funded debt per mile of line ($34,306.), it appears that the funded debt of said 116 railroad companies represented by the mileage of main lines and branches owned by said railroad companies in this state was $371,077,185.

Upon the same basis the total amount of capital stock and funded debt represented by the mileage of main lines and branches owned by said railroad companies within this state was $683,331,524.

From the published report of the State Board of Equalization for the year 1900 it appears that the full value of all the railroad property in the State of Illinois, as founded by said Board, included main tracks, second main tracks, side or turnout tracks, buildings on right of way and rolling stock, was $389,393,360.

176 From the published report of the State Board of Equalization for the year 1873 (p. 35) it appears that the following resolution was referred to the Committee on Assessment of Capital Stock of Corporations:

"Resolved, that for the purpose of equalizing between land, town and city lots, personal property, railroads and corporations, sixty per cent. be the rate of general average in the State."

From the published report of said Board for the year 1874 (p. 79) it appears that the Committee on Capital Stock of Corporations made a report to the Board, accompanying which was a table (pp. 86, *et seq.*) showing "The assessment of capital stock of companies and associations incorporated under the laws of this State, other than railroad companies." Such companies and associations are listed in said table under the following headings: "Name of company; Location; Capital stock paid up; Total indebtedness, except for current expenses; Market or actual value of paid capital stock and debt; as determined by the state board; Capital stock and debt, as equalized with the aggregate assessment of the state, by deducting forty per cent. of market or actual value; Total equalized value of tangible property assessed where located; Assessed and equalized value of capital stock, being excess of equalized value of capital stock and debt over equalized value of tangible property." The report of said Committee was adopted by the Board. (p. 96).

177 From the published report of said Board for the year 1875 (pp. 8, 9) it appears that the following resolution was adopted:

"Resolved that in the opinion of this Board, the real and personal property of the state is assessed for the year 1875 at fifty per cent. of its cash value."

From the published report of said Board for the year 1876 (pp. 7, 9) it appears that the following resolution was adopted:

"Resolved that it is the opinion of this Board that the real and

personal property of the State has been assessed at fifty per cent. of its cash value, for the year 1876."

From the published report of said Board for the year 1877 (pp. 17, 18) it appears that the following resolution was offered:

"Resolved that it is the opinion of this Board that the real and personal property of the State is assessed for the year 1877 at sixty per cent. of its cash value."

That an amendment changing the percentage from sixty per cent. to fifty per cent. was accepted by the mover of such resolution, and that the same was then adopted.

From the published report of said Board for the year 1878 (p. 10) it appears that the following resolution was offered:

"Resolved that it is the opinion of this Board that the real and personal property of the State is assessed at sixty per cent. of its cash value for the year 1878."

That said resolution was amended by changing the per-
178 centage from sixty per cent. to fifty per cent., and as amended adopted.

From the published report of said Board for the year 1879 (pp. 10, 11) it appears that the following resolution was offered:

"Resolved that it is the opinion of this Board that the real and personal property of the State, is assessed at sixty-five per cent. of its cash value for the year 1879."

That said resolution was amended by changing the percentage from sixty-five per cent. to fifty per cent., and as amended adopted.

From the published report of said Board for the year 1880 (p. 6) it appears that the following resolution was adopted:

"Resolved that in the opinion of this Board the real and personal property of the state is assessed at fifty per cent. of its cash value, for the year 1880."

From the published report of said Board for the year 1881 (p. 9) it appears that the following resolution was adopted:

"Resolved that in the opinion of this Board the real and personal property of the State is assessed at fifty per cent. of its cash value, for the year 1881."

From the published report of said board for the year 1882 (p. 6) it appears that the following resolution was adopted:

"Resolved that in the opinion of this Board the real and personal property of the State is assessed at fifty per cent. of its cash value, for the year 1882."

179 From the published report of said Board for the year 1883 (p. 5) it appears that the following resolution was adopted:

"Resolved that in the opinion of this Board the real and personal property of the State is assessed at fifty per cent. of its cash value for the year 1883."

From the published report of said Board for the year 1890 (p. 5) it appears that the following resolution was adopted:

"Resolved that in the opinion of this Board, the real and personal property of this State, as returned by the local assessors for the year 1890, is assessed at twenty-five per cent. of its fair cash value."

From the published report of said Board for the year 1891 (p. 9) it appears that the following resolution was adopted:

"Resolved that in the opinion of this Board, the real and personal property of this State, as returned by the Local Assessors for the year 1891, is assessed at an average rate not exceeding twenty-five per cent. of its fair cash value."

From the published report of said Board for the year 1893 (p. 10) it appears that the following resolution was adopted:

"Resolved that in the opinion of this Board, the real and personal property of this State, as returned by the Local Assessors for the year 1893, is assessed at an average rate not exceeding twenty-five per cent. of its fair cash value."

As to each of the years from 1873 to 1900, inclusive, except the years expressly above referred to, no resolution similar to those above quoted was adopted: but the reports of said Board for each year show that the column containing the assessment placed by said
180 Board upon the capital stock of corporations, other than railroad companies, is entitled in the following language:

"Net assessment of capital stock, being excess of equalized value over the equalized value of tangible property."

181 Statement showing the capital stock and outstanding bonded indebtedness (as shown by Brown's Directory of American Gas Companies for 1900) of gas companies in Illinois, other than the People's Gas Light and Coke Company, together with the equalized value of the tangible property, and the "full value" of the capital stock and franchises of such companies as fixed by the state board of equalization for purposes of taxation in the year 1900.

	Capital stock.	Bonds.	Equalized value of tangible property.	Full value of capital stock and franchises as fixed by board.
Alton Ry. Gas & Electric Co	$500,000	$450,000	$39,276	$201,380
Aurora Gas Light Co	300,600	230,000	.....	25,000
Belleville Gas Light & Coke Co	50,000	17,000		
Union Gas & Electric Co. (Bloomington)	400,000	.....	7,793	163,965
People's Gas & Electric Light Co. (Canton)	50,000			
Centralia Light & Power Co	47,000	.....	5,100	30,500
Urbana & Champaign Gas & Electric Co. (Champaign)	500,000	435	23,045	250,000
Clinton Gas Co. (new Company)	50,000			
Danville St. Ry. & Light Co	700,000	525,000	85,000	425,000
Decatur Gas & Electric Co	400,000	372,000	35,481	250,000
Dixon Power & Lighting Co	100,000	38,500	.....	12,500
Du Quoin Light, Heat & Power Co	50,000	40,000	8,021	45,105
Elgin American Gas Co	100,000	305,000	.....	20,000
Northwestern Gas Light & Fuel Co. (Evanston)	2,000,000	.....	.....	25,000
Freeport Light & Fuel Co	100,000	36,000	5,563	57,815
Galena Gas Light Co	63,000			
Galesburg Gas & Electric Light Co	330,000	350,000	21,199	155,995
Galva Gas Light & Coke Co	30,000			
182 Jacksonville Gas Light & Coke Co	200,000	33,500	19,307	101,535

Statement showing the capital stock, etc.—Continued.

	Capital stock.	Bonds.	Equalized value of tangible property.	Full value of capital stock and franchises as fixed by board.
Joliet Gas Light Co	$300,000	$285,000	$27,744	$188,720
Citizens' Gas Co. (Kankakee)	150,000			
Kewanee Light & Power Co	100,000	80,000	6,315	56,575
La Grange Gas Co. (New Company)	100,000			
Peru-La Salle Gas Light & Power Co. (La Salle)	130,000	100,000		
Lincoln Gas Co	100,000	85,000	4,800	90,000
Litchfield Light, Heat & Power Co	50,000	35,000	263	6,315
Macomb Electric Light & Gas Co	50,000			
Mattoon Gas Light & Coke Co	50,000	50,000		12,500
Mendota Light & Heat Co	25,000	8,800		5,000
People's Power Co. (Moline)	300,000	290,000	17,923	115,000
Monmouth Gas Co	30,000	20,000	8,500	42,500
Morris Gas Co	40,000	20,000	1,496	12,480
Murphysboro Water Works, Electric & Gas Light Co	80,000	80,000	10,817	56,585
Ottawa Gas Light & Coke Co	100,000		3,822	24,110
Paris Gas Light & Coke Co	50,000			10,000
Pekin Light, Heat & Power Co	100,000	100,000	7,734	63,670
People's Gas & Electric Co. (Peoria)	500,000		37,422	213,110
Peoria Gas Light & Coke Co	300,000		47,200	236,000
Quincy Gas & Electric Co	600,000	600,000	31,255	300,000
Rockford Gas Light & Coke Co	300,000	485,000	16,754	125,000
Springfield Gas Light Co	75,000		27,264	136,320
Sterling Gas & Electric Light Co	40,000	36,000	5,560	27,800
Streator Gas & Light Co	100,000	60,000		15,000
Citizens' Gas Light & Fuel Co. (Taylorville)	12,290		653	10,000
North Shore Gas Co. (Waukegan)	1,000,000			
Ogden Gas Co. (Chicago)	5,000,000		37,826	239,130
	$15,922,280	$4,782,235	$572,982	$3,948,610

183 *Statement Showing Aggregate Assessments Made by Local Assessors in the Years* 1873 *to* 1900.

1873	$1,210,108,863
1874	1,105,658,176
1875	1,025,428,289
1876	958,405,803
1877	892,380,972
1878	818,987,409
1879	744,742,846
1880	739,462,515
1881	746,034,852
1882	750,635,758
1883	756,422,291
1884	746,547,501
1885	733,533,951
1886	726,178,132
1887	726,078,638
1888	709,304,506
1889	711,515,026

1890	727,549,707
1891	737,504,791
1892	745,754,172
1893	760,837,855
1894	737,989,016
1895	743,840,153
1896	731,215,488
1897	713,443,706
1898	693,443,706
1899	895,869,090
1900	779,513,078

184 *Statement Showing Total Value of Personal Property as Assessed by Local Assessors for the Years* 1873 *to* 1900.

1873	$301,566,517
1874	267,469,471
1875	239,102,189
1876	212,893,542
1877	187,648,455
1878	169,815,099
1879	151,629,963
1880	165,091,710
1881	168,674,777
1882	167,304,024
1883	167,276,876
1884	159,767,095
1885	153,333,048
1886	147,998,610
1887	148,246,088
1888	140,990,725
1889	142,726,240
1890	141,981,057
1891	143,529,274
1892	143,799,494
1893	145,136,023
1894	127,973,857
1895	129,254,545
1896	120,428,916
1897	117,098,946
1898	114,215,007
1899	183,526,987
1900	166,542,866

185 *Statement Showing the Aggregate Value of Lands as Assessed by the Local Assessors During the Years* 1873 *to* 1900.

1873	$643,196,808
1874	586,022,941
1875	552,012,889
1876	522,394,667

1877	491,723,358
1878	447,942,329
1879	412,208,278
1880	398,338,737
1881	399,267,959
1882	395,757,100
1883	394,016,653
1884	389,109,470
1885	380,488,162
1886	371,940,467
1887	365,476,933
1888	352,995,885
1889	348,604,543
1890	345,750,094
1891	343,624,261
1892	339,043,920
1893	338,064,144
1894	334,030,873
1895	332,409,485
1896	329,474,124
1897	323,837,358
1898	319,047,998
1899	315,963,816
1900	309,394,797

186 *Statement Showing the Aggregate Value of Town and City Lots as Assessed by the Local Assessors During the Years* 1873 *to* 1900.

1873	$241,820,362
1874	245,854,685
1875	228,814,552
1876	218,055,488
1877	208,540,957
1878	197,031,558
1879	177,567,698
1880	173,260,959
1881	176,023,751
1882	185,592,977
1883	193,063,755
1884	195,642,562
1885	197,741,226
1886	203,835,559
1887	210,112,460
1888	213,400,542
1889	218,332,464
1890	237,654,199
1891	249,141,918
1892	260,408,429
1893	275,029,263

1894	273,693,566
1895	280,074,344
1896	279,307,191
1897	270,633,137
1898	258,323,686
1899	393,262,409
1900	300,913,328

187 *Statement Showing Aggregate Assessment on Town and City Lots in Cook County as Assessed by the Local Assessors During the Years* 1873 *to* 1900.

1873	$90,447,759
1874	100,689,670
1875	97,795,613
1876	96,789,412
1877	94,637,338
1878	95,374,127
1879	85,791,192
1880	85,635,165
1881	87,192,987
1882	95,448,675
1883	101,456,866
1884	103,408,025
1885	107,295,606
1886	112,994,128
1887	119,437,668
1888	123,132,781
1889	126,795,669
1890	143,347,119
1891	150,690,710
1892	157,446,400
1893	164,389,327
1894	165,045,268
1895	169,252,421
1896	167,671,344
1897	158,767,689
1898	146,672,035
1899	285,717,467
1900	192,550,863

Comparative Statement Showing State Aggregate Average of the Value of Personal Property as Assessed by Local Assessors for the Years 1873 *to* 1900.

	Horses.	Cattle.	Mules and asses.	Sheep.	Hogs.	Steam engines, including boilers.	Fire or burglar proof safes.	Billiard tables, etc.	Carriages and wagons.	Watches and clocks.	Sewing and knitting machines.	Pianos.	Melodeons and organs.
1873....	$52.41	$17.74	$59.09	$1.96	$3.17	$679.05	$105.80	$92.58	$35.86	$6.89	$32.50	$142.95	$60.39
1874....	45.92	15.63	50.39	1.62	2.60	582.67	84.63	75.21	31.22	5.61	25.31	117.63	53.02
1875....	40.95	14.27	45.75	1.51	2.90	504.27	76.83	65.56	27.72	5.65	21.56	102.57	47.22
1876....	36.92	13.37	40.70	1.44	3.35	408.85	65.85	55.86	24.92	4.55	18.32	87.68	41.58
1877....	33.90	12.38	36.92	1.30	2.56	364.89	58.94	43.14	21.94	4.01	14.01	76.43	35.99
1878....	29.63	11.19	32.39	1.15	1.50	321.94	53.30	39.14	18.88	3.62	10.44	67.42	28.95
1879....	26.63	10.15	28.82	1.10	1.36	194.15	45.19	34.23	17.13	3.18	8.42	59.23	24.66
1880....	26.56	9.95	29.77	1.29	1.53	247.99	40.71	30.44	16 56	3.11	7.71	54.68	22.36
1881....	27.66	10.04	31.50	1.29	1.86	236.64	40.23	29.98	17.01	3.00	7.29	52.42	20.55
1882 ..	28.22	10.18	31.17	1.28	2.03	247.88	38.71	31.24	15.34	2.94	6.79	51.12	19.42
1883...	28.89	10.45	32.21	1.25	2.23	240.05	32.56	31.10	14.42	2.83	6.39	49.21	18.20
1884....	28.41	10.13	31.20	1.16	1.85	221.29	33.75	31.02	13.62	2.78	5.97	46.11	16.92
1885....	27.16	9.61	29.26	.99	1.55	205.57	31.92	28.83	12.52	2.62	5.58	45.88	14.89
1886....	26.13	8.84	27.39	.95	1.32	184.78	29.29	27.55	11.72	2.53	5.25	42.39	14.09
1887....	25.80	8.31	26.79	.96	1.48	176.79	28.39	24.92	11.38	2.47	5.12	40.18	13.41
1888....	24.88	7.11	25.03	.96	1.42	167.35	26.50	24.27	10.71	2.39	4.74	38.45	12.46
1889....	24.21	6.59	24.46	.98	1.52	154.37	26.10	23 39	10.10	2.27	4.53	37.00	11.74
1890....	22.96	6.43	23.44	1.02	1.39	151.97	25.73	22.89	9.67	2.19	4.46	37.16	11.25
1891....	21.96	6.30	22.94	1.07	1.25	149.14	25.82	21.66	9.35	2.16	4.34	34.29	10.51
1892....	20.74	6.07	21.64	1.06	1.26	142.50	25.00	22.09	9.10	2.09	4.23	33.65	10.11
1893....	19.41	6.34	20.69	1.04	1.69	138.51	23.06	21.09	9.15	2.05	4.12	32.63	9.75
1894....	14.87	6.26	16.63	.84	1.43	130.37	21.84	19.31	8.55	1.98	3 98	29.74	9.11
1895....	12.84	6.68	13.84	.85	1.42	125.87	21.22	18.38	8.09	1.92	3.94	29.08	8.63
1896....	11.33	6.49	12.15	.80	1.26	121.88	20.54	18.59	7.83	1.91	3.74	27.49	8.22
1897....	10.49	6.58	11.14	.82	1.29	117.99	20.67	16.91	7.29	1 78	3.59	26.58	7.90
1898...	10.64	6.63	11.69	.86	1.22	112.96	19.40	16.43	7.02	1.72	3.48	25.75	7.36
1899....	8.20	5.03	8.83	.72	.84	94.88	10.16	13.10	4.71	1.64	2.21	19 53	4.95
1900....	9.06	4.92	9.88	.76	1.07	85.99	9.41	7.92	4.45	1.52	1.99	18.09	4.39

190½ Twenty-ninth: Said Circuit Court erred in admitting and receiving in evidence, over the objection and exception of Defendants' counsel, the testimony of Edward J. E. Ward, as follows:—

I have been familiar for over twenty years with the concern known as the Union Stock Yards and Transit Company; said Company is a very large market for the sale of all sorts of live stock, cattle, hogs, horses and so forth. It is the sole market of the kind in Cook County for cattle, hogs, sheep and live-stock generally. I have procured, under direction, the annual reports of the Union Stock Yards and Transit Company, and from those reports and from other data I have prepared a statement showing the number of cattle, the hogs and horses received at the Union Stock Yards and Transit Company during the year- 1899 to 1901 inclusive, the total value of each kind of animals, and average value per head, compiled from those statistics. This paper which I now show you, is that compilation.

(Witness here produced Ward Exhibit B, November 12, 1903.)

From this compilation it appears that during the year 1899, 2,514,-446 head of cattle, of a total value of $123,207,854, or an average value of $49 per head, was received; in the same way, for the year 1900, there were 2,729,046 head of cattle, of a total value of $136,-452,300, of the average value per head of $50; and in the year 1901, without specifying the name or number of cattle, the average price received was $48 per head. In 1899 the average price per head was

191 $9.74.

For the year 1900, the average price per hog received was $11.84; for the year 1901, $13.00. With reference to horses, the average prive received in 1899 was $112.50; in 1900, $116; in 1901, $120. All these figures are taken from the annual reports of the Union Stock Yards and Transit Company that have been referred to.

Thirtieth: The said Circuit Court erred in admitting and receiving in evidence, over the objection and exception of defendants' counsel, the document known as Ward Exhibit B, November 12, 1903, which was as follows:—

WARD EXHIBIT B, Nov. 12, '03.

Statement showing the number of cattle, hogs and horses sold at the Union Stock Yards, Chicago, during the calendar years 1899 to 1901, inclusive, the total value of each kind of animals and the average value per head. Compiled from the annual statistical reports of the Union Stock Yard and Transit Company for the years indicated.

Cattle.

Year.	Number of head.	Total value.	Average per head.
1899	2,514,446	123,207,854	$49
1900	2,429,046	136,452,300	50
1901	3,031,396	145,507,008	48

Hogs.

1899	8,177,870	$79,734,233	9.74
1900	8,109,064	96,092,408	11.84
1901	8,290,494	107,776,422	13.00

Horses.

1899	111,611	12,556,237	112.50
1900	99,010	11,485,160	116.00
1901	109,353	13,122,360	120.00

Thirty-first: The said Circuit Court erred in admitting and receiving in evidence over the objection and exception of defendants' Counsel, a report from the Illinois State Board of Agriculture for December 1900, as follows:—

"Livestock, Hogs: There is a slight increase in the number of hogs assessed this year over 1899, the number reported being 2,829,960. In the Northern Division of the State there were 1,210,227; in the Central Division 1,138,979; and in the Southern Division 480,754. At the equalized value of $1.07 per head, they were worth $3,028,057.00. The number of corn fed hogs marketed was 2,348,855, or 83 per cent. of the number assessed, and their average live weight was 225. The heaviest hogs marketed were in Northern Illinois, where their average weight was 243 pounds. In the Central Division the average weight was 218 pounds and in the Southern Division 195 pounds. The total live weight of the hogs

marketed during the year was 527,833,094. The average price received of $4.35 per cwt. is the highest since 1894 and varied but little in different sections of the State. At this rate the total value of the hogs marketed would be $23,066,408, of which amount Northern Illinois received $10,609,820.00; Central Illinois $9,126,358; and Southern Illinois, $3,330,230.00."

"The following table shows assessed and marketed in 1899, as well as their weight and value for the last 45 years. For 1899, the assessor's returns of the number of hogs was 2,796,483, of a value of

$2,349,046.00. 83% is the estimated per cent. of the total crop that was marketed. The number of hogs that were marketed in that year was 2,321,060. The total gross weight per head was 234 pounds; the total gross weight 542,267,060 pounds. The value per cwt. gross, $3.60; and the total value of hogs marketed was $19,658,897.00.

"For the year 1900 the Assessors' returns were 2,829,960 hogs of the value of $3,028,057.00. 83% is the estimated per cent. of the total number that were marketed. The total number that were actually marketed is 2,348,855. The average gross weight per head was 225 pounds. The total gross weight, 527,833,094; the value per cwt. gross, was $4.35, and the total value received, from hogs marketed $23,066,408.00.

"More cattle were reported by the Assessors this year than last, 2,009,598 being returned. Of this number 1,085,050 were in Northern Illinois, 658,663 in Central Illinois, and 265,885 in the Southern Division of the State at the equalized value of $4.92 per cwt., (?) they were worth to the feeder $9,887,222. 23% of
194 the number assessed, or 462,197 were marketed, their average live weight being 1125 pounds. In the Northern Division of the State the average weight of the cattle marketed was 1115 pounds; in Central Illinois 1205 pounds; and in Southern Illinois but 968 pounds. The total weight of cattle marketed was 520,065,373 pounds. The average value of the cattle sold during the year was $4.25; and the total value $22,089,527.00,—the best returns for this class of live stock since 1884. Over half of this amount $11,586,603.00 should be credited to Northern Illinois, $8,209,791.00 to Central Illinois and $2,293,073 to Southern Illinois."

Thirty-second: The said Circuit Court erred in admitting and receiving in evidence, over the objection and exception of Defendants' Counsel, the document known as Ward Exhibit C, November 12, 1903, as follows:—

WARD EXHIBIT C., Nov. 12, '03.

Statement Showing the Number of Head of Horses, Cattle and Hogs in the State of Illinois, returned for taxation in 1900 by the Local Assessors, compared with the number of Head of Horses, Cattle & Hogs in the State of Illinois, on June 1st, 1900, according to United States Census Office returns.

Kind.	Number of head returned by local assessors in Illinois for 1900.	U. S. Census for June 1st, 1900.	Difference.
Horses	1,209,446	1,350,219	140,773
Cattle	2,438,275	3,104,010	665,735
Hogs	2,690,367	5,915,468	3,225,101

195 Thirty-third: The said Circuit Court erred in admitting and receiving in evidence, over the objection and exceptions

of defendants' Counsel, the following evidence admitted into the record between counsel only in the event that the same was competent and material to the issues:

"That the Union Stock Yards and Transit Company now owns and conducts in the City of Chicago a live stock yard and market for the reception, handling, sale and disposition of all kinds of live stock, and has continuously conducted and operated the same since 1865;

That at said market there is received annually a large number of horses, cattle, hogs, sheep and other live stock which are sent to said market to be sold and disposed of to purchasers there gathered from all parts of the United States and Europe;

That such live stock is received from all parts of the United States but chiefly from the territory lying west, north and south of the State of Ohio;

That in the course of business, as conducted at said market, the prices of all live stock sold in said market are recorded in books kept for that purpose by the Union Stock Yards and Transit Company, and that said Union Stock Yards and Transit Company annually and at the end of each calendar year or shortly thereafter compiled and tabulates the result of the trade in said live stock during said year at said market, and the prices realized for the said live stock, which tabulation of values is thereupon by the
196 Union Stock Yards and Transit Company printed and published generally in the form of the annual report heretofore produced and offered in evidence by the complainant at the hearing before the Master on November 12, 1903;

That from the annual report of said Union Stock Yards and Transit Company appears that the total receipts of live stock at said market since its establishment in the year 1865 up to and including the year 1901 were

65,125,851 Head of Cattle,
2,518,278 Calves,
202,197,439 Hogs,
52,142,667 Sheep,
1,644,620 Horses.

That the total sum realized for the live stock so received and sold at the said market during that period was the sum of $5,792,705,549.00."

Thirty-fourth: The said Circuit Court erred in admitting and receiving in evidence over the objections and exceptions of defendants' Counsel the testimony of Williston Fish, as follows:

I am a lawyer, in the employ of the Chicago Union Traction Company. I prepared the schedules of property for the Company for the years 1900, 1902, and 1903. I have made an investigation of the sales of stocks and bonds of the Chicago Union Traction Company and the Underlying Companies on the Stock Exchange during the entire existence of the Chicago Union Traction Company, and I have made a memorandum of the amount of such sales,
197 which is contained in this report. (Referring to Exhibit 1 to the deposition of Williston Fish.) I used the yearly re-

ports made by the newspapers called the Economist, published in Chicago, and giving the sales and prices for each year from 1899 to 1903, and I also obtained the reports from the daily papers, published in Chicago during that time. I have an intimate knowledge of the affairs of the Company and the market quotations for the last four years of the stocks and bonds of the Chicago Union Traction Company, and its underlying companies, on the stock exchange, do not give a fair indication of the real value of the property of said company. I have spent about a third of my time since 1899, in making inventories, and examining the tangible personal property of said Chicago Union Traction Company and the underlying Companies. On April 1st, 1900, all of the property of the Chicago Union Traction Company, including realty and personalty and franchises was worth less than $27,000,000, and all the property of the underlying companies at the same time was worth $12,242,972.12.

Thirty-fifth. The said Circuit Court erred in admitting and receiving in evidence, over the objection and exception of Defendants' Counsel, the document known as Exhibit 1 of the testimony of W. Fish 11/25/'03 as follows:

The following statement shows the high and low values on the Chicago Stock Exchange and the amounts dealt in of the stocks and bonds named, in each of the years 1899, 1900, 1901, 1902, and in 1903 up to November.

198 Chicago Union Traction Company.

Common Outstanding, 20,000.

	Date low.	Low.	High.	Date high.	Sales.
1899	Dec. 22	23	39	Aug. 25	40,066
1900	Dec. 15	8½	29½	Jan. 5	47,577
1901	May 9	9½	20⅞	May 28	126,544
1902	Jan. 16	10	22⅞	Apr. 29	134,032
1903	June 19	3½	17	Jan. 13	23,245

199 Chicago Union Traction Company.

Preferred Outstanding, 12,000,000.

	Date low.	Low.	High.	Date high.	Sales.
1899	Dec. 22	72	87¾	Aug. 31	28,158
1900	Dec. 15	40	78¼	Jan. 2	45,211
1901	Dec. 19	47	61½	June 7	41,222
1902	Dec. 23	45	59½	Apr. 29	19,420
1903	Apr. 22	26	51	Jan. 13	8,365

200 West Chicago Street Railway Company.

Issued	13,189,000
Owned by C. U. T. Co	3,216,000
Outstanding	9,973,000

Year.	Date low.	Low.	High.	Date high.	Sales.
1899	Jan. 3	91⅝	124¼	Sept. 1	127,989
1900	Dec. 22	96½	113	Feb. 5	31,405
1901	Nov. 21	90	108	Mar. 15	30,108
1902	Dec. 15	83	103¼	May 2	14,680
1903	Oct. 10	50	93	Jan. 14	8,717

201 North Chicago Street Railroad Company.

Stock issued	7,920,000
Owned by C. U. T.	2,022,600
Outstanding	5,897,400

Year.	Date low.	Low.	High.	Date high.	Sales.
1899	Jan. 24	217	250¼	May 1	20,256
1900	Dec. 26	190	228	Feb. 7	3,729
1901	Dec. 2	180	207	Mar. 1	4,694
1902	Dec. 22	158	199¾	Apr. 29	4,917
1903	Oct. 5	95	175	Jan. 14	4,122

202 Chicago Consolidated Traction Company.

4½'s, $—.

Year.	Date low.	Low.	High.	Date high.	Sales.
1899					
1900					
1901					
1902	Feb. 11	67	80	Mar. 27	219,000
1903	Oct. 20	60	70½	Apr. 2	136,000

203 **North Chicago Street Railroad Company.**

First Mortgage, 5's, 1906 { Total, 1906 & 1909, $3,171,000.

The 1906's are:

Year.	Date low.	Low.	High.	Date high.	Sales.
1899	July 21	105¼	108½	Oct. 27	23,500
1900	Dec. 31	104⅜	105⅛	Dec. 19	16,000
1901	Oct. 4	104	104½	July 3	10,500
1902	Feb. 28	103	103	May 5	31,500
1903	June 4	97	100	Mar. 9	19,000

The 1909's are:

1899					
1900	Nov. 19	105⅞	106¾	May 16	24,000
1901	Oct. 9	106	106½	Aug. 6	19,000
1902	Apr. 2	104	104¼	Feb. 24	11,000
1903	June 5	97	99½	Mar. 26	9,000

204 North Chicago City Railway Company.

4½'s, 2,500,000.

Year.	Date low.	Low.	High.	Date high.	Sales.
1899	Nov. 21	107	109¾	July 14	23,000
1900	Feb. 9	107⅛	108¾	June 5	54,000
1901	Dec. 17	105	108⅓	May 21	53,000
1902	Aug. 1	105	107	Apr. 10	14,000
1903	May 7	98	103	Jan. 29	12,000

205 West Chicago Street Railroad Company, Consolidated.

5's, $6,114,000.

Year.	Date low.	Low.	High.	Date high.	Sales.
1899	Jan. 3	94¾	107½	July 12	2,924,000
1900	Dec. 17	100	104½	Jan. 5	900,000
1901	Dec. 26	98⅞	104⅞	Apr. 13	749,500
1902	Dec. 11	94	101½	Apr. 4	340,000
1903	Sept. 12	80	97¼	Jan. 14	135,000

206 West Chicago Street Railroad Company.

Debenture 6's, $497,000.

Year.	Date low.	Low.	High.	Date high.	Sales.
1899	Mar. 6	100	102	June 14	158,000
1900	July 19	100	100½	Oct. 30	89,000
1901	Nov. 25	100	100¾	Sept. 4	37,000
1902	Sept. 23	99½	100¼	May 5	9,000
1903	May 31	87	106	Jan. 13	19,000

207 West Chicago Street Railroad Company.

1st Mortgage, 5's.

Year.	Date low.	Low.	High.	Date high.	Sales.
1899	Apr. 11	109	112	July 13	104,000
1900	Jan. 20	108	111½	June 21	111,000
1901	Dec. 14	109½	111	May 13	123,000
1902	Dec. 29	104¾	109½	May 1	141,000
1903	July 23	96	104	Feb. 25	78,000

208 Chicago West Division Railway Company.

4,016,000 4½'s.

Year.	Date low.	Low.	High.	Date high.	Sales.
1899					
1900	Apr. 19	107¾	109	Apr. 4	7,000
1901	Oct. 22	108½	110	Mar. 7	6,000
1902	Mar. 24	109½	109½	Nov. 3	5,000
1903	Oct. 1	93	105	Jan. 20	35,000

209 Thirty-sixth: The said Circuit Court erred in admitting and receiving in evidence over the objection and exception of defendants' counsel the testimony of William G. Beale, as follows:—

"I appeared before the State Board of Equalization, and gave to said Board detailed information in reference to the value of the property of the Chicago Edison Company, and handed said Board a pamphlet entitled 'Report of Chicago Edison Company for the fiscal year ending March 31, 1900,' which was offered and received in evidence as Complainant's Exhibit A 10/29/02, H. W. B.; that I compiled the information contained in said report in reference to the value of the capital stock, and the amount of bonded indebtedness. A part of the information I got from direct investigation, and part from public reports, and a part from employing an agent to go out and find the facts.

Thirty-seventh: The said Circuit Court erred in admitting and receiving in evidence over the objection and exception of Defendants' Counsel, the documents marked Complainant's Exhibit A, which document is attached to the bill of complaint in the case of the Chicago Edison Company *vs.* Samuel B. Raymond *et al.*, in the Circuit Court of the United States for the Northern District of Illinois, No. 26,163.

210 Thirty-eighth: The said Circuit Court erred in admitting and receiving in evidence over the objection and exception of defendants' counsel, the document entitled Complainant's Exhibit B, which document is attached to the bill of complaint in the case of the Chicago Edison Company *vs.* Samuel B. Raymond *et al.*, now pending in the Circuit Court of the United States for the Northern District of Illinois, No. 26,163.

Thirty-ninth. The said Circuit Court erred in admitting and receiving in evidence, over the objection and exception of defendants' counsel, the testimony of Arthur D. Wheeler, as follows:

"I appeared before the State Board of Equalization while it had under consideration the proper capital stock assessment for the Chicago Telephone Company for the year 1900, and answered questions and gave information to said Bo concerning the capital stock valuations of said Company. On of the members of the Capital Stock Committee of the Board stated that the Committee could not or would not act until they had received word as to the wishes or ideas of the Court. At about this stage one of the attorneys for the relators in the Mandamus proceeding came into Court with a paper in his hand, and I was ushered out, and fifteen or thirty minutes after that the Committee reported the assessment against the Chicago Telephone Company, which was afterwards accepted by the State Board.

211 Fortieth: The said Circuit Court erred in admitting and receiving in evidence over the objection and exception of defendants' counsel, the following evidence of Fred E. Smith:

"The ordinary operation of a street railroad results in a gradual depreciation of its plant. A charge ought to be made every month on account of such depreciation. Such depreciation in the case of the Chicago Union Traction Company amounts to a little over seven and one half per cent. per annum of the entire value of the property. No such depreciation had been charged against the Chicago Union Traction Company on its books. I have prepared a statement of the income and expenses of the Chicago Union Traction Company for the fiscal year ending June 30, 1900. It is that which I hand you. (Referring to Complainant's Exhibit 1, set forth in the Master's report, filed June 9, 1902.) I have made a compilation upon the lines laid down by Judges Grosscup and Humphrey in their opinion, as to what the taxes would amount to if they were fixed at the rate of 8.035. I capitalized the true net income of -2,057,352.61 apon a six per cent. basis, which resulted in a capitalization of $34,289,210.17. I equalized these on a seven per cent. basis, which produces a capitalization of $24,002,447.12; took one-fifth of this for the assessed value, which was $4,800,489.42. As computed on the basis of that rate, 8.035 it produces $385,719.32.

I then deducted the taxes already paid of $239,097.22, leaving the amount to be paid $146,622.10.

212 Forty-first: The said Circuit Court erred in admitting and receiving in evidence, over the objection and exception of Defendants' counsel, Exhibit Number 1, offered and received in evidence in the case of the Chicago Union Traction Company *vs.* Samuel B. Raymond *et al.* No. 26,609, contained in the Master's Report, filed in said cause, June 9, in the following words:

Chicago Union Traction Company.

Income Account, Year Ending June 30th, 1900.

Income from all sources:		
Passenger Receipts	$7,468,797.98	
Chartered Cars	2,122.50	
Mail	6,477.58	
Advertising	33,576.95	
Rent of Land and Buildings	35,622.14	
Rent of Tracks and Terminals	10,000.00	
Interest on Deposits	17,690.11	
Miscellaneous	3,336.03	
Total Income from all sources		$7,577,623.29
Expenses:		
Maintenance—Way & Structures	193,666.90	
Maintenance—Equipment	381,082.87	
Transportation	2,836,167.01	
General Expenses	1,119,962.07	
Interest on Loans	41,776.80	
213 Depreciation, being 6% of $9,364,928.57, full value of personal property, said full value being obtained upon the assumption that the Assessors' full valuation of said personal property for the year 1900, to-wit: $6,555,450, was only 70% of real value	561,895.71	
Total Expenses		$5,134,551.36
Net earnings applicable to payment of Bond interest, rentals and taxes		$2,443,071.93
Deducting taxes for 1900, already paid		239,097.22
Leaving net income		2,203,974.71

This amount will be further reduced by the amount of taxes to be paid under the decision rendered by Judges Grosscup and Humphreys."

Forty-second: The said Circuit Court erred in admitting and receiving in evidence, over the objection and exception of Defendants' Counsel, oral testimony for the purpose of explaining, varying and contradicting the official acts, records and proceedings of the State Board of Equalization for the years 1900 and 1901, wherein and whereby said Board made the assessment against the property of the complainant sought to be enjoined in this cause.

Forty-third: The said Circuit Court erred in refusing and failing to hold that parol evidence was incompetent, for the purpose of explaining, varying or contradicting the official acts, records and proceedings of the State Board of Equalization of the State
214 of Illinois, in reference to the assessments on the capital stock of the complainant, made by the said board in the year 1901, for the year 1900.

Forty-fourth: The said Circuit Court erred, in failing and refusing to hold that inasmuch as complainant contributed to the expense of said Mandamus suit, instituted in the Circuit Court of Sangamon County, Illinois, against the State Board of Equalization of the State of Illinois, for the purpose of compelling said Board to assess the capital stock of the complainant and the other corporations therein named, for the year 1900, and inasmuch as the complainant participated in directing and controlling the conduct of said litigation, therefore the complainant was concluded by the outcome of said suit, and the proceedings of said State Board of Equalization, and the assessment of the Capital Stock of Complainant for the year 1900, made by the said State Board of Equalization of the State of Illinois, in obedience to said writ of Mandamus, and said Circuit Court erred in failing and refusing to hold, that all of the aforesaid proceedings are *res adjudiciata*, and constitute an estoppel by judgment and verdict against the Complainant, conclusively establishing the validity and regularity of the said assessment complained of in the bill of complaint in this cause.

In all of which respects these defendants claim that the aforesaid judgment and decree of said Circuit Court are erroneous,
215 illegal and invalid, and therefore these defendants pray that the said judgment and decree may be reversed, set aside and held for nought.

HARRY A. LEWIS,
WILLIAM F. STRUCKMAN,
JAMES HAMILTON LEWIS, AND
DAVID K. TONE,
Solicitors for the Above-named Defendants.

(Endorsed:) Filed Aug. 10, 1906. Marshall E. Sampsell, Clerk.

216 And on to-wit: the tenth day of August, being one of the days of the regular July term of said Court, 1906, in the record of proceedings thereof in said entitled cause before the Hon. Peter S. Grosscup, Circuit Judge, appears the following entry to-wit:

Order of August 10, 1906, *Allowing Appeal.*

26168.

THE PEOPLES GAS LIGHT AND COKE COMPANY
vs.
SAMUEL B. RAYMOND, County Treasurer of Cook County, Illinois, and *ex-officio* County Collector, Cook County, Illinois and JOHN J. HANBERG, His Successor in office as County Treasurer of Cook County, Illinois, and *ex-officio* County Collector of Cook County, Illinois, and *ex-officio* Town Collector of the Town of South Chicago, and MAURICE FITZGERALD, Town Collector of the Town of South Chicago, and THE CITY OF CHICAGO.

Upon motion of David K. Tone, Esq., solicitor for the defendants, and on filing petition for an order allowing an appeal, together with assignments of errors, it is Ordered that an appeal be and is hereby allowed to the Supreme Court of the United States from the decree entered herein on the twenty-fifth day of July, 1906, and that the amount of the bond upon appeal be and hereby is fixed at the sum of two hundred dollars. Said bond to be approved by the Clerk of this Court.

217 And on to-wit: the fifth day of September, 1906, there was filed in the clerk's office of said Court in said entitled cause a certain Bond on Appeal in words and figures following to-wit:

218 Know all men by these presents, That we, Samuel B. Raymond, County Treasurer of Cook County, Illinois, and *ex-officio* County Collector of Cook County, Illinois, and John J. Hanberg, his successor in office as County Treasurer of Cook County, Illinois, and *ex-officio* County Collector of Cook County, Illinois, and *ex-officio* Town Collector of the Town of South Chicago, and Maurice Fitzgerald, Town Collector of the Town of South Chicago, and the City of Chicago, as principals and National Surety Company, as surety, are held and firmly bound unto Peoples Gas Light and Coke Company in the full and just sum of Two Hundred ($200.00) Dollars, to be paid to the said Peoples Gas Light and Coke Company its certain attorney, successors or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly and severally, by these presents.

Sealed with our seals, and dated this 30th day of August, in the year of our Lord one Thousand nine hundred and six.

Whereas, lately at a session of the Circuit Court of the United States for the Northern District of Illinois, Eastern Division, on July 25th, A. D. 1906, in a suit depending in said Court, between Peoples Gas Light and Coke Company, complainant, and Samuel B. Raymond, County Treasurer of Cook County, Illinois, and *ex-officio* County Collector of Cook County, Illinois, and John J. Hanberg, his successor in office as County Treasurer of Cook County, Illinois, and

ex-officio County Collector of Cook County, Illinois, and *ex-officio* Town Collector of the Town of South Chicago, and Maurice Fitzgerald, Town Collector of the Town of South Chicago, and The City of Chicago, defendants, a decree was rendered against the said defendants above named, restraining them from collecting cer-
219 tain taxes levied against the property of complainant, and the said defendants above named, having obtained an appeal to the Supreme Court of the United States and filed a copy thereof in the Clerk's office of the said Court to reverse the decree in the aforesaid suit,

Now, the condition of the above obligation is such, that if the said Samuel B. Raymond, County Treasurer of Cook County, Illinois, and *ex-officio* County Collector of Cook County, Illinois, and John J. Hanberg, his successor in office as County Treasurer of Cook County, Illinois, and *ex-officio* County Collector of Cook County, Illinois, and *ex-officio* Town Collector of the Town of South Chicago, and Maurice Fitzgerald, Town Collector of the Town of South Chicago, and The City of Chicago, shall prosecute their appeal to effect, and answer all damages and costs if they fail to make their plea good, then the above obligation to be void; else to remain in full force and virtue.

S. B. RAYMOND, [SEAL.]
County Treasurer of Cook County and ex-officio County Collector of Cook County, Illinois.

JOHN J. HANBERG, [SEAL.]
Successor to Samuel B. Raymond, as County Treasurer of Cook County, Illinois, and ex-officio County Collector of Cook County Illinois, and ex-officio Town Collector of the Town of South Chicago.

MAURICE FITZGERALD, [SEAL.]
Town Collector of the Town of South Chicago.

[SEAL.] CITY OF CHICAGO,
By E. F. DUNNE, *Mayor.*

Attest:
A. C. ANSON, *City Clerk.*

NATIONAL SURETY COMPANY,
[SEAL.] CHARLES S. CRAIN,
Attorney in Fact.

Approved:
MARSHALL E. SAMPSELL, *Clerk.*

(Endorsed:) Filed Sep. 5, 1906. Marshall E. Sampsell, Clerk.

220 NORTHERN DISTRICT OF ILLINOIS, *Northern Division, ss:*

In the Circuit Court of the United States, Northern District of Illinois, Northern Division.

26168.

PEOPLE'S GAS LIGHT & COKE COMPANY
vs.
SAMUEL B. RAYMOND ET AL.

Master's Report.

* * * * * * * *

221 2.00 p. m., March 3, 1904, Adjourned to new notice.
10.00 a. m., April 11, 1904.

Parties met pursuant to notice and adjourned to 10.00 a. m. April 14, 1904.

10.00 a. m., April 14, 1904, adjourned to 2.00 p. m. April 18, 1904.

2.00 p. m., April 18, 1904.
Parties met pursuant to adjournment.
Present: On behalf of complainant: Mr. W. M. Flook, representing Sears, Meagher & Whitney. On behalf of defendants: Mr. Frank L. Shepard and Attorney General H. J. Hamlin.

Mr. SHEPARD: In the case of the Peoples Gas Light & Coke Company, in behalf of the defendants, we offer the following stipulation of facts:

It is agreed by counsel for the respective parties that the following statement with reference to the Peoples Gas Light & Coke Company may be admitted as evidence in this case, so far as the facts therein set forth are concerned, as distinguished from the conclusions
222 in the last paragraph thereof, subject to any objection that the complainant may have as to its materiality and relevancy namely:

The authorized capital stock of the Peoples Gas Light & Coke Company on April 1, 1900, was $30,000,000.00 of which $28,668,800.00 was outstanding.

That the outstanding bonded debt on April 1, 1900, was $34,496,000.00.

That the capital stock of the Peoples Gas Light & Coke Company on the Chicago and New York Stock Exchanges during the year 1900 ranged from $83.25 per share, the lowest price, to $110.25 per share, the highest price;

That the value of the capital stock based on the highest market price, namely $110.25 would amount to $31,607,352.00 and the value of the capital stock based on the lowest market price, namely $83.25 per share would amount to $24,866,776.00.

Adjourned to 2.00 p. m. April 26, 1904.

223 2.00 p. m., TUESDAY, *April* 26, 1904.

Continuation pursuant to adjournment.

Present: On behalf of complainant. Mr. W. H. Flook, representing Sears, Meagher & Whitney. On behalf of defendants: Mr. Wilkerson, Mr. Shepard, Attorney General Hamlin.

Mr. WILKERSON: We offer in evidence Exhibit 13, on pages 61 and 62 of the Abstract of Record in the case of The State Board of Equalization et al. vs. People of the State of Illinois, etc., already produced by counsel for the complainant.

Also, Exhibit 14, on pages 63, 64 and 65 of the same Abstract.

Also the range of prices on the New York Stock Exchange, appearing on page 92 of the Abstract.

Also the range of prices on the New York Stock Exchange appearing on page 95 of the Abstract.

Also the statement with reference to the People's Gas Light & Coke Company, appearing on pages 111 to 115 of the Abstract.

Also, certified copy of the rules of the State Board of Equalization, appearing on pages 186 to 190 of the abstract.

224 Also, the deposition of A. W. Miller appearing on page 175 of the Abstract.

Also, the deposition of Philip Knopf appearing on page 176 of the Abstract.

Also, the testimony of W. H. Eubanks, commencing on page 190 of the Abstract.

Also, the statements of the People's Gas Light and Coke Company to the State Board of Equalization appearing on pages 205, 273 and 274 of the Abstract.

It is stipulated and agreed by and between the parties hereto that the entire record in said cause may be treated with the same effect as if the witnesses themselves were produced and examined in this case, and the original documents themselves produced; the complainant reserving the right to object on the grounds of irrelevancy or immateriality.

(Said portions of said Abstract thus offered in evidence are in words and figures as follows, to-wit:)

225 Said exhibit "13" purporting to be the annual report of the Peoples Gas Light & Coke Company for the fiscal year ending December 31, 1899, shows,

The amount of manufactured gas sold during the year was 6,879,419,985 cubic feet, and the gross receipts of the company—

From all sources were	$8,096,319.74
While the operating expenses exclusive of bond interests were	3,813,037.63
Leaving	4,283,282.11
Deducting depreciation	464,409.48
	$3,818,872.63
Deducting bond interest	1,857,300.00
Leaves the net earnings of the year	$1,961,752.63

This is equivalent to 6.84 per cent upon the outstanding capital stock of the company, $28,668,800. After the payment of dividends for the year at the rate of 6 per cent. a surplus remains of $241,444.63.

226 The People's Gas Light & Coke Company.

Condensed Trial Balance, December 31st, 1899.

Dr.		Cr.	
Real Estate Franchise, Tunnels, Street Mains, Meters, services, etc...	$65,420,560.93	Capital Stock.....	$30,000,000.00
Materials.....	467,657.13	Mortgage Bonds.....	34,496,000.00
Securities.....	1,475,955.67	Deposits, security for Gas Bills.....	77,819.50
Accounts receivable	200,756.08	Accounts payable.....	348,386.42
Deposits with agencies for Bond Coupons, Gas Bills Receivable..	889,642.02	Coupons past due.....	355,990.00
City of Chicago.....	140,442.67	Bond Interest accrued.	217,858.34
Cash.....	196,269.73	Profit & Loss.....	3,649,574.25
	$69,145,628.51		$69,145,628.51

Securities On Hand.

Miscellaneous Bonds.....	$114,528.13
Green St. Property.....	30,227.54
13,312 shares of Capital Stock of P. G. L. & C. Co. in treasury.....	1,331,200.00
	$1,475,955.67

227 *Sales of Gas, Gross and Net Receipts for Twelve Months, Ending December 31st, 1899.*

Manufactured Gas sold, cu. ft.....	6,879,419,985
Gross receipts from all sources.....	$8,096,319.74
Operating expenses (bond interest not included....	3,813,037.63
Leaving.....	$4,283,282.11
Charged off Street Mains cut out and abandoned, renewals and repairs to works, meters, mains and services and for bad debts.....	464,409.48
	$3,818,872.63
Bond interest.....	1,857,300.00
Net earnings 6.84 per cent. on $28,668,800.00 outstanding stock.....	1,961,572.63
Dividends paid in 1899 at 6 per cent.....	1,720,128.00
Surplus.....	241,444.63

Petitioners offer the report for the year ending December 31, 1900 Exhibit "14."

(Obj. to by respondents as incompetent, immaterial and irrelevant.)

The COURT: The same character of objection is urged against these as to the papers which were offered in evidence identified by the other witness, it is only as to those objections, the same character of objections.

Mr. MILLER: Yes, to the matter, it is not to the truthfulness or accuracy of the report at all, it is to the materiality and competency.

228 (Obj. overruled; respondents except.)

Said Exhibit "14" purporting to be the annual report of the Peoples G. L. & C. Co. for the year ending Dec. 31, 1900 shows:

The amount of manufactured gas sold during the year was 7,425,979,693 cubic feet, and the gross receipts of the company—

From all sources were	$9,090,337.36
While the operating expenses, exclusive of bond interest were	4,447,786.65
Leaving	4,642,550.71
Deducting depreciation	584,175.76
	$4,058,374.95
Deducting bond interest	1,857,300.00

This is equivalent to 7.68 per cent. upon the outstanding capital stock of the company, $28,668,800. After the payment of dividends, at the rate of 6 per cent. a surplus for the year remains of $480,946.95.

229 The People's Gas Light & Coke Company.

Condensed Trial Balance, December 31st, 1900.

Dr.		Cr.	
Real Estate franchises, Tunnels, Street Mains, Meters, services, etc.	$66,421,317.15	Capital Stock	$30,000,000.00
Materials	490,489.30	Mortgage Bonds	34,496,000.00
Securities	1,475,955.67	Deposits security for gas bills	69,069.50
Accounts receivable	186,174.45	Accounts payable	334,304.02
Deposits with agencies for Bond coupons	352,474.50	Coupons past due	354,230.00
Gas bills receivable	904,048.02	Profit and loss	4,130,521.20
City of Chicago	12,695.32		
Cash	468,828.65		
	$70,311,983.06		$70,311,983.06

Securities on Hand.

Miscellaneous Bonds	$114,528.13
Green St. Property	30,227.54
13,312 shares of capital stock P. G. & C. Co. in treasury	1,331,200.00
	$1,475,955.67

230 *Sales of Gas, Gross and Net Receipts for Twelve Months, Ending December 31, 1900.*

Manufactured gas sold, cu. ft	7,425,979,693
Gross receipts from all sources	$9,090,337.36
Operating expense (Bond interest not included.)	4,447,786.65
Leaving	$4,642,550.71
Charged off: Street mains cut out and abandoned, renewals and repairs to works, meters, mains and services and for bad debts	584,175.76
	$4,058,374.95

Bond interest	$1,875,300.00
Net earnings, 7.68 per cent. on $28,668,800.00 outstanding stock	2,201,074.95
Dividends paid in 1900 at 6 per cent	1,720,128.00
Surplus	480,946.95

Range of Prices on the New York Stock Exchange.

Stocks Peoples Gas.

March 24.	March 26.	March 27.
99 100½	98 100½	98⅜ 99⅜
March 28.	March 29.	March 30.
99⅝ 104¼	102 104¾	102¾ 106⅛
Jan. 1 to Mar. 30, 1900.		Range in 1899.
92 109⅜		90½ 129½

231 *Range of Prices on the New York Stock Exchange.*

Stocks Peoples Gas.

Saturday Mar. 31.	Monday Apr. 2.	Tuesday Apr. 3.
106½ 109	109 111½	108 109⅜
Wednesday, Apr. 4.	Thursday Apr. 5.	Friday Apr. 6.
107⅛ 109½	106⅝ 110½	71½ 72¼
Range in 1899.		
90½ 129½		

People's Gas Light and Coke Company.

Liabilities.

Capital Stock.

Authorized $30,000,000.00 Outstanding..... $28,668,800

Bonds.

Outstanding issues covered by the $40,000,000 refunding mortgage of Sept. 1, 1897:

Peoples Gas Light and Coke first mortgage 6 per cent., gold, due Nov. 1, 1904, Interest payable May and November at Central Trust Company, New York.....	$2,100,000
Peoples Gas Light and Coke, second mortgage 6 per cent., gold, due Dec. 1, 1904, interest payable June and December at Central Trust Company.....	2,500,000
232 Peoples' Gas Light and Coke consolidated mortgage, 6 per cent., gold, due April 1, 1943, interest payable April and October at Central Trust Company...	4,900,000
Illinois Light, Heat and Power Company, first mortgage 7 per cent., due Nov. 1, 1915, interest payable May and November	500,000
Chicago Gas Light and Coke first mortgage 5 per cent. gold due July 1, 1937, interest payable January and July at Central Trust Company, New York.....	10,000,000
Equitable Gas Light and Fuel Company, first mortgage 6 per cent., gold due July 1, 1905, interest payable January and July at Central Trust Company.....	2,000,000
Consumers' Gas Company, first mortgage 5 per cent. gold, due Dec. 1, 1936 interest payable June and December at Central Trust Company, New York.....	4,246,000
Lake Gas Company, first mortgage 6 per cent., due July 1, 1915, interest payable January and July.....	300,000
Peoples Gas Light and Coke refunding 5 per cent. gold, due September 1, 1947, interest payable November and February at Central Trust Company, New York.....	2,500,000
Other issues	$29,046,000

233 Hyde Park Gas Company, first mortgage, 6 per cent., gold due Sept. 1, 1904, interest payable March and September at First National Bank, Chicago	$200,000
Mutual Fuel Gas Company, first mortgage 5 per cent., gold, due Nov. 1, 1947, interest payable May and November at Central Trust Company, New York....	5,000,000
Calumet Gas Company, first mortgage 6 per cent., gold due July 1, 1917, interest payable January, April, July and October, at Equitable Trust Company, Chicago	250,000
Total bonds outstanding May 1, 1900.....	$34,496,000
Total Capitalization May 1, 1900.....	63,164,800

Dividends.

1889.	1890.	1891.	1892.	1893.	1894.
4%	3%	3%	5¼%	4½%	6%
1895.	**1896.**	**1897.**	**1898.**	**1899.**	
*2½%	*1½%	6%	6%	6%	

*Payment of dividends enjoined during part of year.

The company now pays 6 per cent. in quarterly dividends, February, May, August and November.

Property. The company owns gas plants and mains comprising nearly the entire gas industry in Chicago. Details as to mains, lamps, etc. are given below.

234 Operations.

	1897.	1898.	1899.
Gross Receipts	$7,125,439	$7,265,528	$8,096,319
Operating Expenses	3,688,976	3,795,301	3,813,037
Net	$3,436,463	$3,795,301	$4,283,282
Bonds Interest	1,842,300	1,842,300	1,857,300
*Charged off	.....	.....	464,409
Net for stock.....	$1,594,163	$1,627,925	$1,961,572
Per cent. on stock.....	6.37	6.51	6.84
**Dividend, 6 per cent....	.....	.....	1,720,128
Surplus for year.....	.....	.....	241,444
Sales of manufactured gas (cubic feet)	5,795,124,208	6,114,587,380	6,879,419,985
Miles street mains..	1,525	1,584½	1,705
Number meters	199,473	230,293	274,604
Public lamps	32,425	28,023	25,121

*For street mains abandoned, renewals, repairs and bad debts, not stated separately prior to 1899.

**Amount not stated in reports prior to 1899, but 6 per cent. was paid each year.

Balance Sheet, December 31.

Assets.

	1897.	1898.	1899.
Real Estate, franchises, mains, etc.	$60,181,559	$61,762,139	$65,420,560
Materials	441,434	453,914	467,657
Securities	201,577	1,451,577	1,475,955
Accounts receivable	167,204	174,645	200,756
Deposits for bond coupons	347,212	355,156	354,364
Gas bills receivable	673,268	742,827	889,642
City of Chicago	235,820	66,717	140,422
Cash	1,320,403	1,606,303	196,269
Central Trust Company	.....	1,972,586	.....
Other bills receivable	100,000	.....	.....
	$63,668,481	$68,585,869	$69,145,628

235

Liabilities.

Capital Stock	$25,000,000	$30,000,000	$30,000,000
Bonds	34,246,000	34,246,000	34,496,000
Deposits for gas bills	301,574	120,189	77,819
Accounts payable	321,348	237,047	348,386
Coupons past due	348,575	356,645	355,990
Accrued bond interest	176,191	217,858	218,858
Profit and loss	3,274,791	3,408,129	3,649,574
	$63,668,481	$69,585,869	$69,145,628

Mortgages: The Chicago Gas Light and Coke Company issued a first mortgage, dated July 1, 1887, to secure the above bond issue. The mortgage runs to the Fidelity Insurance, Trust and Safe Deposit Company of Philadelphia as trustee. The original issue was $7,650,000 and the mortgage provided that additional bonds up to $10,000,000 might be issued for 90 per cent. of amounts expended for betterments and extensions to plant. All the bonds authorized have now been issued.

The Equitable Gas Light and Fuel Company executed a first mortgage, dated July 1, 1885, running to the Central Trust Company of New York, as trustee, to secure the above mentioned $2,000,000 of bonds.

The Consumers' Gas Company executed a first mortgage dated December 1, 1886, running to the Central Trust Company of New York, as trustee, to secure the above mentioned bonds. Only part of the bonds were issued immediately, and the remainder were issued to cover 90 per cent. of the cost of extensions and additions.

236 The Illinois Light, Heat and Power Company first mortgage dated Novmber 18, 1885, runs to J. S. Zimmerman, trustees, and covers the works of the mortgagor. The bonds are

guaranteed by the Peoples Company, and $500,000 of the Peoples consolidated bonds of April 1, 1893, are reserved to retire this issue.

The Peoples Gaslight and Coke Company issued a first mortgage dated November 1, 1874, running to the Union Trust Company, New York, trustee, to secure the above-mentioned $2,100,000 of bonds.

On December 1, 1874, it issued a second mortgage running to the same trustee, to secure the $2,500,000 of second mortgage bonds. The first and second mortgage bonds were guaranteed in the form given above.

On April 1, 1893, it executed a mortgage to secure an issue of $10,000,000 consolidated bonds, for the purpose of funding its outstanding obligations into one general debt and to pay for other property and for improving extending and equipping its plants. The mortgage covers all property, franchises, rights and easements of every name and nature, then owned or thereafter to be acquired in any manner. Of the New bonds, $8,000,000 were issued forthwith, $4,600,000 being retained by the trustee to cover the two above mentioned bond issues and $3,400,000 delivered to the company for its uses. Of the remainder not more than $1,500,000 can be issued so long as the gas company is bound by its guaranty to the $500,000 of bonds of the Illinois Light, Heat and Power Company, and the $1,500,000 of bonds were to be issued only to the amount
237 of 90 per cent of sums actually spent in acquiring new property, or in improving, enlarging or bettering the company's plants. All the bonds authorized by the mortgage have now been issued.

The Peoples Gaslight and Coke Company's refunding 5 per cent bonds are secured by mortgage, of date September 1, 1897, running to the Farmers' Loan and Trust Company of New York as trustee, and securing a total issue of $40,000,000 of which $29,046,000 were reserved to take up outstanding issues of, or assumed by the Peoples Company. These outstanding issues were in the table as shown above, except that $2,500,000 of Chicago Economic Fuel Gas bonds, then outstanding, have since been exchanged for the refunding bonds. The mortgage provides that when the Gas Company delivers to the trustee any of the old bonds, the trustee shall certify and deliver an equal amount of the reserved funding bonds. Or, at or six months prior to maturity of any old issue, the Gas Company may deposit with the trustee cash sufficient to pay such issue and then the trustee shall certify and deliver an equal amount of the reserved bonds. As to bonds of an old issue, delivered by the Gas Company before maturity, however, such bonds shall be held uncanceled by the trustee until 99 per cent at least of the issue is delivered, when it shall cancel and surrender to the Gas Company all the bonds of the issue which it holds. The remaining $10,954,000 of the new bonds are issuable from time to time to cover, at par, the cost of extension, additions and improvements, or to cover the cost of any new property of any sort which the Gas Company may
238 buy. The Gas Company may fix a rate of interest less than 5 per cent on the reserved bonds, as they are issued, in its dis-

cretion. In case of foreclosure, 75 per cent of the bonds control the proceedings, including place and manner of sale.

The Hyde Park Gas Company's first mortgage, dated September 1, 1884, runs to George W. Smith, trustee, and creates a first lien on all property of mortgagor.

The Mutual Fuel Gas Company's first mortgaged, dated November 1, 1897, runs to the Central Trust Company and covers all property of mortgagor. The issue is limited to $5,000,000, all of which were certified and delivered at once. The bonds are guaranteed, principal and interest by the Peoples Company.

The Calumet Gas Company's first mortgage runs to Equitable Trust Company as trustee, and secured an issue of $500,000 bonds, of which $250,000 have been retired.

History. The Peoples Gaslight and Coke Company was organized under the special charter of the Illinois Legislature February 12, 1855. The original capital was $500,000 which was increased in 1865 to $4,000,000. In 1887, the capital stock of this company and of the Chicago Gaslight and Coke Company, the Equitable Gaslight and Fuel Company and the Consumers' Gas Company was acquired by the Chicago Gas Trust Company. The Consumers' Company owned the capital stock of the Hyde Park Gas Company and the Lake Gas Company, The Chicago Gaslight and Coke Company owned the capital stock of the Suburban Gas Company, and the
239 Peoples Company owned the capital stock of the Illinois Light Heat and Power Company. These eight corporations, therefore, passed into the hands of the Chicago Gas Trust Company which issued $25,000,000 of capital stock. The capital stock of the principal acquired companies was as follows:

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Name of Company.	Authorized Cap. No. Shares.	Authorized Cap. Par Value.	Cap. Outstanding. No. Shares.	Cap. Outstanding. Par Value.	Purchased by Trust. No. Shares.	Purchased by Trust. Par Value.
Chicago Gas Light & Coke.....	200,000	$5,000.000	199,368	$4,984,200	198,817	$4,970,425
People's Gas Light & Coke.	40,000	4,000,000	40,000	4,000,000	34,645	3,464,500
Equitable Gas Light & Coke...	30,000	3,000.000	30.000	3,090,090	29,898	2,989,800
Consumers Gas Co.	50,000	5,000,000	30,000	3,000,000	29,850	2,985,000
	320,000	$17,000,000	299,368	$14,984,200	293,210	$14,409,725

After much litigation and various changes of form, all of the above corporations excepting the Hyde Park Gas Company were, in August 1897, formally and legally consolidated in one corporation under the names and the charter of the Peoples Gaslight and Coke Company, under provisions of an act passed by the Illinois Legislature in the spring of 1897. The capital stock of the Peoples Gaslight and Coke Company was then increased to $25,000,000 and this capital stock was exchanged dollar for dollar for the $25,000,000 of Central Trust Company receipts, which at that time carried the ownership of the Gas properties, formerly vested in the Chicago Gas Trust Company, but not formally incorporated with it, were formally

merged with the Peoples Company, and their capital stock canceled. In November, 1898, the authorized capital stock was increased from $25,000,000 to $30,000,000 and $3,750,000 of the new issue offered to old stockholders *pro rata* at par. The resolutions declared it to be the policy of the company to provide additional capital as
241 needed by increase of capital stock, rather than by bond issues. In January, 1899, the Calumet Gas Company (operating in South Chicago) was formally merged with the Peoples Company.

In July 1891, a contract was made between the various companies originally merged in the Peoples Gas Light and Coke Company and the City of Chicago, providing that the price of gas to private consumers should be $1 net per thousand after 1896 and that the companies should pay the city 3½ per cent. of their gross receipts from the sale of gas.

242 *(Rules of State Board of Equalization.)*

Whereas, The fourth clause of section three of "An Act for the assessment of property, and for the levy and collection of taxes," approved March 30, 1872, in force July 1, 1872,—provides as follows:—

3. Fourth. The capital stock of all companies and associations now or hereafter created under the laws of this state, shall be so valued by the State Board of Equalization as to ascertain and determine, respectively, the fair cash value of such capital stock, including the franchise, over and above the assessed value of the tangible property of such company or association. Said board shall adopt such rules and principles for ascertaining the fair cash value of such capital stock as to it may seem equitable and just; and such rules and principles when so adopted, if not inconsistent with this act, shall be as binding, and of the same effect as if contained in this act, subject, however, to such change, alteration or amendments as may be found from time to time to be necessary by said board: Provided, that in all cases where the tangible property or capital stock of any company or association is assessed under this act, the shares of capital stock of any such company or association shall not be assessed or taxed in this clause shall not apply to the capital stock or shares of capital stock or banks organized under the general banking laws of this state; therefore, be it

243 Resolved: That for the purpose of ascertaining the fair cash value of the capital stock, including the franchise, of all companies and associations now or hereafter created under the laws of this state, and for the assessment of the same, or so much thereof as may be found to be in excess of the assessed or equalized value of the tangible property of such companies and associations respectively, we the State Board of Equalization, hereby adopt the following rules and principles, viz:—

First. The market or fair cash value of the shares of capital stock and the market or fair cash value of the debt (excluding from such debt the indebtedness for current expenses), shall be combined or

added together; and the aggregate amount so ascertained shall be taken and held to be the fair cash value of the capital stock, including the franchise, respectively, of such companies and associations.

Second. From the aggregate amount so ascertained as aforesaid, there shall be deducted the aggregate amount of the equalized or assessed valuation of all the tangible property, respectively, of such companies and associations (such equalized or assessed valuation being taken in each case, as the same may be determined by the equalization or assessment of property by this board), and the amount remaining, in each case if any, shall be taken and held to be the amount and fair cash value of the capital stock,
244 including the franchise, which this board is required by law to assess, respectively, against companies and associations, now or hereafter created under the laws of this state.

Resolved, That for the purpose of ascertaining the fair cash value of the capital stock, including the franchise, of all companies or associations now or hereafter created under the laws of this state, and for the assessment of the same, or so much thereof as may be found to be in excess of the assessed or equalized value of the tangible property of such companies and associations, respectively, we, the State Board of Equalization, hereby adopt the following rules and principles, viz:—

First. The market or fair cash value of the shares of capital stock, and the market or fair cash value of the debt, to be determined by reference to the Stock Exchange or the books of said corporations, and the returns made to the State Board, or other means (excluding from such debt the indebtedness for current expenses), shall be combined or added together, and the aggregate amount so ascertained, shall be taken and held to be the fair cash value of the capital stock, including the franchise, respectively, of such companies and associations.

Second. From the aggregate amount ascertained as aforesaid, there shall be deducted the aggregate amount of the equalized or assessed valuation of all tangible property, respectively, of such com-
245 panies and associations (such equalized or assessed valuation being taken, in each case, if any, shall be taken and held to be the amount and fair cash value of the capital stock, including the franchise, which this board is required by law to assess, respectively, against companies and associations now or hereafter created under the laws of this state.

Resolved, That for the purpose of ascertaining the fair cash value of the capital stock, including the franchise, of all companies and associations now or hereafter created under the laws of this state, and for the assessment of the same, or so much thereof as may be found to be in excess of the assessed or equalized value of the tangible property of such companies and associations, respectively, we, the State Board of Equalization, hereby adopt the following rules and principles, viz:—

First. The capital stock of each said company or association shall be valued as an entirety, due consideration being given to the following propositions:

a. To the character and duration of the franchise of said company or association.

b. To the amount of the contribution (if any) demanded of and paid by the said company or association under the provisions of any contract or ordinance, to any municipality, as compensation for the use of its franchise privileges in said municipality.

246 *c.* The highest and the lowest quotations of the shares of stock of said company or association during the twelve months immediately preceding the date of assessment and the number of shares of stock sold at such quotations.

d. Any other fact or condition or circumstance that will assist in arriving at a just, equitable, fair cash value of said capital stock.

Second. From the aggregate amount ascertained as aforesaid, there shall be deducted the aggregate amount of the equalized or assessed valuation of all the tangible property, respectively, of such companies and associations, wherever the same may be located (such equalized or assessed valuation of its Illinois property, being taken in each case, as the same may be determined by the equalization or assessment of property by this board), and the amount remaining in each case, if any, shall be taken and held to be the amount and fair cash value of the capital stock, including the franchise, which this board is required by law to assess, respectively, against companies and associations now or hereafter created under the laws of this state.

Third. The above and foregoing are declared to be the only existing rules and principles adopted by this board for its government in the assessment of the capital stock of companies or associations.

The yeas and nays being called for, those voting in the 247 affirmative were Messrs. Barnes, Cadwallader, Cruttenden, Hirsheimer, Leavitt, Long, Martin, McAnsh, McKenna, McKnight, Pierce, Robeson, Rogers, Simon, Severin, Taylor, Wall and Works—18 votes. There being no negative votes, the resolution was declared carried.

248 Deposition of A. W. MILLER, called as a witness on behalf of petitioners:

I am a member of the Board of Cook County Assessors. I have been a member of the Board of Cook County Assessors two years and three months. I have seen the printed sheet of the companies mentioned in the petition in this case. My attention was first called to one of these sheets about the 1st of June last year. To the best of my knowledge none of these corporations filed any capital stock schedule with us. That is during the year 1900. All corporations that did not file schedules with our board of assessors, the board made schedules for them, and all schedules were turned over to the county clerk. I mean the return or statement of capital stock for purpose of capital stock taxation. Returns that we made out, were made out, as far as I can remember, for all of the companies on that list, to the best of my knowledge.

Deposition of PHILIP KNOPF, called as a witness on behalf of petitioner:

I am County Clerk of Cook County; have been County Clerk of Cook County about six years and a half. With reference to the capital stock returns or statements and schedules concerning
249 the twenty-three corporations on the printed list that is being used in this case I sent them to the State Board of Equalization at Springfield, that is all, when they were filed in my office. I have not seen this printed list that is on the table (List read to witness). The schedules for them may have been all made, and not any. There are several hundred filed in the office. I don't remember what they were. My office received certain statement with reference to capital stock from the Board of Assessors, and as to all of those statements and the schedules received by me from the Board of Assessors, I sent them to Springfield. Not only from the Board of Assessors, but from the individual corporations, too, you know; I got some from the corporations outside of the Board of Assessors. I send them to State Board of Equalization. I think sent to the Auditor, I think he is chairman of the board, *Ex-officio* chairman, I think, I ain't sure about that.

Cross-examination:

I received back from the Auditor of Public Accounts of the State certified results of the assessments of corporations made by the State Board of Equalization for the year 1900. And also results of the equalization of assessments made by local assessors. I received these as County Clerk of Cook County; that is the way we spread
250 the taxes. The assessment made by the State Board of Equalization of the corporations in Cook County assessed by them and all assessments of property in Cook County.

Mr. GREENACRE: You are making him your witness, you intend to have it that way?

Mr. MILLER: You can save an objection if you want to.

(Objected to as not cross-examination.)

And when I got these certificates of statements of the assessment by the State Board of Equalization and also of the results of the equalization or assessments from the Auditor of Public Accounts, I extended the taxes for the year 1900. And I made the warrants and the books for the collection and delivered them to the collectors as required by law for the taxes 1900.

251 W. H. EUBANKS, called for relators, testified:

I am employed in the auditor's office as chief clerk I was secretary of the last State Board of Equalization. I believe I was first elected in 1892, I am not positive about that, I think it was 1892, and I have been elected and served with every board since that time up to the present.

(Paper handed reporter and marked Exhibit "27", also paper marked Exhibit "28" and paper marked Exhibit "29", also paper marked Exhibit "30".)

Exhibit "27" is a list filed by the clerk of Cook County in the auditor's office; it purports to be a list or schedule of capital stock made up by the Board of Assessors; I take it to be that under the heading on it, and the signatures and designated, I am not positive, but I think it came with a bunch of returns, that is my recollection of it now. That was filed on the 8th of October, 1900, I think that was the date; no, the 17th of October. There was no papers sent with these, I don't think, except the schedules of capital stock sent by the assessors of the various companies listed here.

Paper marked Exhibit "28" are copies of statements of corporations made up by the Board of Assessors of Cook County, I don't know who they were made by. Only by the signature, that is all. I simply know what they show on their face. The originals are in the auditor's office. The originals were received by mail
252 from the County clerk's office of Cook County, I say by mail or express.

For the year 1900 I did not receive any other statements or schedules from the county clerk of Cook County for the purpose of taxation than the originals of which these Exhibits "27" and "28" are copies, not to my recollection; no papers pertaining to capital stock.

Exhibit "27" offered in evidence by relators.

(Objected to by the respondents as incompetent, immaterial and irrelevant; objection overruled; respondents except.)

Said Exhibit "27" is merely a numbered list purporting to contain the names of 355 companies, corporations or firms, and opposite to the name, in most cases, is a street number.

253 Said Exhibit 32, the statement of People's Gas Light & Coke Company, is on same form and shows:

Amount of capital stock authorized, $30,000,000 number of shares into which said capital stock is divided 300,000. The amount of capital stock paid up, $28,668,800; number of shares actually issued 286,688. Market value of the shares of stock, not known, if no market value, then the actual value, not known.

The total amount of all indebtedness, except the indebtedness for current expenses, excluding from such expenses the amount paid for the purchase or improvement of property, approximately, 34,000,000.

The assessed valuation of lands $34,800 of lots, $6,441,985, personal property $9,050,000. Total assessed valuation of all tangible property of said company, $15,526,785.

Subscribed and sworn to November 17, 1900, by L. A. Wiley, secretary of the Peoples' Gas Light & Coke Company.

254 Statement by The People's Gas Light & Coke Company successors to Chicago Gas Light & Coke Co., Consumers Gas Co., Equitable Gas Light & Fuel Co., Kake Gas Co., Suburban Gas Co., Hyde Park Co., Mutual Fuel Gas Co., Chicago Economic Fuel Gas Co., and the Calumet Gas Co., of capital stock, etc., as required by Sec. 32 for year 1899.

Name of company or association, as above. Location of company or association, Chicago, Ill.

Amount of capital stock authorized	$30,000,000
Number of shares into which said capital stock is divided	300,000
The amount of capital stock paid up	28,668,800
Number of shares actually issued	286,688
Market value of the shares of stock	Not known
If no market value, then the actual value	Not known

The total amount of all indebtedness, except the indebtedness for current expenses, excluding from such expenses the amount paid for the purchase or improvement of property.

The assessed valuation of lands.

Full value	$34,800
Lots	6,441,985
Personal property	9,050,000
Total assessed valuation of all tangible property of company	$15,526,785

255 *Statement of People's Gas Light & Coke Co. of Capital Stock, etc., as Required by Sec.* 32 *for* 1898.

Name of Company or association, People's Gas Light & Coke Co. Location of company or association, Chicago, Ill.

Amount of capital stock authorized	$25,000,000
No. of shares into which said capital stock is divided	250,000
The amount of capital stock paid up	24,929,000
No. of shares actually issued	249,249
Market value of the shares of stock	Not known
If no market value, then the actual value	Not known

The total amount of all indebtedness, except indebtedness for current expenses, excluding from such expenses the amount paid for the purchase or improvement of property.

The assessed valuation of

Lands	$33,250
Lots	575,390
Personal Property	490,400

Total assessed valuation of all tangible property of said company, $1,109,040.

256 Adjourned to 2 p. m., Tuesday, May 3, 1904.

2 p. m., Tuesday, May 3, 1904.
Adjourned to 2 p. m., Tuesday, May 10, 1904.

2 p. m., Tuesday, May 10, 1904.
Adjourned to 2 p. m., Tuesday, May 17, 1904.

* * * * * * *

(Endorsed:) Filed Nov. 19, 1904, Marshall E. Sampsell, Clerk.

257 NORTHERN DISTRICT OF ILLINOIS, *Eastern Division, ss:*

I, Marshall E. Sampsell, Clerk of the Circuit Court of the United States for the Northern District of Illinois, do hereby certify the above and foregoing, consisting of 37 type-written pages to be a true and correct copy of pages 383 to page 423, both inclusive of a certain Master's Report filed in said Court in the cause entitled People's Gas Light & Coke Company *vs.* Samuel B. Raymond, *et al.*, General Number 26,168, as *the* will appear from the original Report now remaining in my custody and control.

In Testimony Whereof, I have hereunto set my hand and affixed the seal of said Court at my office in the City of Chicago, in said District, this 27th day of September 1906.

[Seal of Circuit Court Northern Dist. Illinois, 1855.]

MARSHALL E. SAMPSELL, *Clerk.*

258 And on to-wit: the twenty-sixth day of September, 1906, there was filed in the clerk's office of said Court in said entitled cause a certain stipulation in words and figures following to-wit:

Stipulation.

In the Circuit Court of the United States, Northern District of Illinois, Eastern Division Thereof.

In Chancery. No. 26168.

PEOPLE'S GAS LIGHT AND COKE COMPANY, Complainant,
vs.
SAMUEL B. RAYMOND, County Treasurer Cook County, Illinois, and *ex-officio* County Collector of Cook County, Illinois, and JOHN J. HANBERG, His Successor as County Treasurer of Cook County, Illinois, and *ex-officio* County Collector of Cook County, Illinois, and *ex-officio* Town Collector of the Town of South Chicago, and the CITY OF CHICAGO, Defendants.

It is hereby stipulated between Samuel B. Raymond, County Treasurer of Cook County, Illinois, and *ex-officio* County Collector of Cook County, Illinois, and John J. Hanberg, his successor as Treasurer of Cook County, Illinois, and *ex-officio* County Collector

of Cook County, Illinois, and *ex-officio* Town Collector of the Town of South Chicago, and The City of Chicago, appellants, the People's Gas Light and Coke Company, appellee, that a complete transcript of the record in the case of the Chicago Union Traction Company *vs.* Samuel B. Raymond, County Collector *et al.*, No. 26609, in the Circuit Court of the United States, for the Northern District of Illinois, as per praecipe now on file with the Clerk of said Court, shall be filed in the Supreme Court of the United States by counsel for appellants.

259 And it is further stipulated that the Clerk of said Circuit Court may prepare and transmit to the Clerk of the Supreme Court of the United States at Washington, D. C., the following pleadings, proceedings and papers, which are different in this cause from the corresponding pleadings, proceedings, and papers in said cause of the Chicago Union Traction Company *vs.* Samuel B. Raymond *et al.*, No. 26609:

1st. Bill of complaint, filed February 21st, 1902;

2nd. Answer of the defendants, filed June 28th, 1902;

3rd. Master's report, filed June 9th, 1902, together with the depositions of all witnesses filed on said 9th day of June, 1902, and attached to said Master's report, together with all exhibits accompanying the same;

4th. Answer of City of Chicago, filed May 19th, 1906;

5th. Final decree, entered July 25, 1906;

6th. Order entered August 10th, 1906, correcting final decree as of July 25th, 1906;

7th. Petition for appeal and assignment of errors of defendants, filed August 10th, 1906;

8th. Appeal bond of defendants, filed September 5th, 1906;

9th. Pages 383 to 423 both inclusive, of the transcript of the evidence and exhibits filed with the Master's report of November 9, 1904 and made a part of said report.

And, inasmuch as many of the papers, pleadings, proceedings and orders in this cause are identical with the corresponding papers, pleadings, proceedings and orders in said cause of the Chicago Union Traction Company *vs.* Samuel B. Raymond *et al.*

260 Now, it is hereby further agreed that for the purpose of considering this appeal, the Transcript of the Record in this cause to be used in the Supreme Court of the United States shall consist of the papers, pleadings, proceedings and orders contained in the Transcript of the Record filed in the said cause of the Chicago Union Traction Company *vs.* Samuel B. Raymond, *et al.*, in the Supreme Court of the United States, which it is hereby agreed is identical with the corresponding pleadings, papers, proceedings and orders had in this cause, except in so far as the transcript in this cause has been made up by filing a transcript of the papers, records, proceedings and orders above specifically enumerated. Provided, however, that either party hereto may at any time take up to said Supreme Court by Supplemental Transcript of the Record, any and all other papers, pleadings, proceedings or orders, had in this cause in the said Circuit Court and not above specifically enumerated.

And it is further stipulated that the printed Transcript of the Record in this cause may be made up as follows: the pleadings, proceedings and papers in this cause shall be printed in their order, except where such pleadings, proceedings or papers consist of the record filed in the said cause of the Chicago Union Traction Company *vs.* Samuel B. Raymond *et al.*, when, instead of printing the said record in said last mentioned cause in full in the places where the same belongs, reference shall be made to the page in the printed transcript of the Record in said cause of the Chicago Union Traction Company *vs.* Samuel B. Raymond *et al.*, on which is printed said corresponding pleading, proceeding or paper, and a complete printed transcript of the record in said cause of the Chicago
261 Union Traction Company *vs.* Samuel B. Raymond *et al.* shall be attached to and bound in with said printed Transcript of the Record in this cause.

PEOPLE'S GAS LIGHT AND COKE COMPANY,
By SEARS, MEAGHER & WHITNEY,
Its Solicitors.
CITY OF CHICAGO, SAMUEL B. RAYMOND, COUNTY COLLECTOR, AND ALL OTHER DEFENDANTS.
By HARRY A. LEWIS,
WM. F. STRUCKMANN,
JAMES HAMILTON LEWIS AND
DAVID K. TONE,
Their Solicitors.

(Endorsed:) Filed Sept. 26, 1906. Marshall E. Sampsell, Clerk.

262 And on to-wit: the twenty-sixth day of September, 1906, there was filed in the clerk's office of said Court in said entitled cause a certain Stipulation extending time to file transcript of record in Supreme Court. Said Stipulation is in words and figures following to-wit:

Stipulation Extending Time to File Transcript of Record.

In the Circuit Court of the United States, Northern District of Illinois, Eastern Division.

No. 26168.

PEOPLE'S GAS LIGHT AND COKE COMPANY, Complainant,
vs.
SAMUEL B. RAYMOND ET AL., Defendants.

It is hereby stipulated between the parties to the above entitled cause, by their respective counsel, that the defendants and appellants' time for filing a transcript of record in the above entitled cause, in the Supreme Court of the United States, be extended for

twenty (20) days, that is, up to and including the 29th day of September, 1906.

SEARS, MEAGHER & WHITNEY,
Counsel for Complainant.
HARRY A. LEWIS,
WM. F. STRUCKMANN,
JAMES HAMILTON LEWIS, AND
DAVID K. TONE,
Counsel for Defendants.

(Endorsed:) Filed Sept. 26, 1906, Marshall E. Sampsell, Clerk.

263 NORTHERN DISTRICT OF ILLINOIS, *Eastern Division, ss:*

I, Marshall E. Sampsell, Clerk of the Circuit Court of the United States for the Northern District of Illinois, do hereby certify the above and foregoing to be a true and complete transcript of the proceedings had of record in said court, and made in accordance with Stipulation filed in the cause entitled The People's Gas Light and Coke Company *vs.* Samuel B. Raymond, County Treasurer, Cook County, Illinois, and *ex-officio* County Collector Cook County, Illinois and John J. Hanberg, his successor in office as County Treasurer of Cook County, Illinois and *ex-officio* County Collector of Cook County, Illinois and *ex-officio* Town Collector of the Town of South Chicago and Maurice Fitzgerald Town Collector of the Town of South Chicago and The City of Chicago, as the same appear from the original records and files of said Court, now remaining in my custody and control.

In testimony whereof, I have hereunto set my hand and affixed the seal of said Court at my office in the City of Chicago, in said District, this 27th day of September, 1906.

[Seal Circuit Court U. S., Northern Dist. Illinois, 1855.]

MARSHALL E. SAMPSELL, *Clerk.*

Endorsed on cover: File No. 20,393. N. Illinois C. C. U. S. Term No. 428. Samuel B. Raymond, county treasurer of Cook county, Illinois, and *ex officio* county collector of Cook county, Illinois; John J. Hanberg, his successor as such county treasurer and county collector, *et al.*, appellants, *vs.* The People's Gas Light and Coke Company. Filed October 2d, 1906. File No. 20,393.

Office Supreme Court, U.
FILED,
DEC 11 1906
JAMES H. McKENNEY
CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, A. D. 1906.

No. 428

SAMUEL B. RAYMOND, County Treasurer of Cook County, Illinois, et al.,
Appellants,

vs.

THE PEOPLES GAS LIGHT AND COKE COMPANY,
Appellee.

Appeal from the Circuit Court of the United States for the Northern District of Illinois.

Notice of Motion to Advance and Set Down for Hearing.

HARRY A. LEWIS,
WILLIAM F. STRUCKMANN,
JAMES HAMILTON LEWIS AND
DAVID K. TONE,
Solicitors for Appellants.

Geo. Hornstein Co., Printer, Chicago.

IN THE

SUPREME COURT OF THE UNITED STATES,

OCTOBER TERM, A. D. 1906.

Samuel B. Raymond, County Treasurer of Cook County, Illinois, *et al.*, *Appellants*,

vs.

The Peoples Gas Light and Coke Company, *Appellee.*

No. 428.

NOTICE OF MOTION TO ADVANCE AND SET DOWN FOR HEARING.

To:

SEARS, MEAGHER & WHITNEY,
Solicitors for The Peoples Gas Light and Coke Company.

Please take notice that on Monday, the 10th day of December, 1906, we shall appear before the Supreme Court of the United States in the City of Washington, D. C., at the opening of court on said day, or as soon thereafter as counsel can be heard, and move that the above entitled cause be taken up out of its order upon the docket of said court and advanced and set down for hearing upon some particular day of this term of said court, to be fixed by said court.

A copy of said motion, embodying the reasons in support thereof, together with a printed copy of the final decree entered in said cause is herewith handed you, which will be filed with the clerk of said court.

HARRY A. LEWIS,
WILLIAM F. STRUCKMANN,
JAMES HAMILTON LEWIS, and
DAVID K. TONE,
Solicitors for Appellants.

Received a copy of the above notice and of said motion and final decree this ..... day of December, A. D. 1906.

IN THE

SUPREME COURT OF THE UNITED STATES,

OCTOBER TERM, A. D. 1906.

Samuel B. Raymond, County Treasurer of Cook County, Illinois, *et al.*, *Appellants*,
vs.
The Peoples Gas Light and Coke Company, *Appellee.*
No. 428.

MOTION TO ADVANCE AND SET DOWN FOR HEARING.

Now come Samuel B. Raymond, County Treasurer of Cook County, etc., and John J. Hanberg, his successor, etc., and The City of Chicago, appellants in the above entitled cause, and move the court that this cause be taken up out of its order upon the docket of this court and be advanced and set down for hearing on some particular day of this term, to be fixed by this court.

In support of said motion, the said appellants beg leave to submit the following reasons:

First: It appears from the final decree in this cause (Original Record, page 150½, a printed copy of which final decree is filed herewith, pages 1 to 4) that the Circuit Court, by said final decree, perpetually enjoined an assessment on the capital stock and franchises of the complainant, made by the State Board of Equalization of the State of Illinois,

and aggregating $9,217,067, and the taxes levied pursuant thereto, and it therefore appears that the proceeding in the court below was one which enjoined the revenue officers of the State of Illinois from collecting an assessment made under the authority of the laws of the State of Illinois.

Second: It appears from the final decree in this cause, above referred to, that a question of momentous importance to the People of the State of Illinois, and a constitutional question of great importance in reference to the jurisdiction of a federal court to enjoin state officials from enforcing the revenue laws of the state is involved in this appeal.

Third: It appears from the final decrees entered in each of the seven causes that were heard together in the court below (printed copies of which final decrees are filed in each of the said respective causes), that all of said causes involve the same questions, and that by the action of the Circuit Court in enjoining the collection of the capital stock assessments made against each of said corporations, respectively, about $2,000,000 of the taxes levied by the State Board of Equalization of the State of Illinois for the year 1901 was perpetually enjoined, and that by reason of the vast sum of money so enjoined, and by reason of the importance of securing a speedy determination of the validity of said assessments, this cause should be advanced and heard out of its regular order.

HARRY A. LEWIS,
WILLIAM F. STRUCKMANN,
JAMES HAMILTON LEWIS, and
DAVID K. TONE,
Solicitors for Appellants.

Office Supreme Court, U. S.
FILED.
DEC 11 1906
JAMES H. McKENNEY,
CLERK.

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, A. D. 1906.

No. 425 119

SAMUEL B. RAYMOND, County Treasurer of Cook County, Illinois, et al.,
Appellants,

vs.

THE PEOPLES GAS LIGHT AND COKE COMPANY,
Appellee.

COPY OF FINAL DECREE AND OF STIPULATION.

Appeal from the Circuit Court of the United States for the Northern District of Illinois.

IN THE CIRCUIT COURT OF THE UNITED STATES,
FOR THE NORTHERN DISTRICT OF ILLINOIS,
EASTERN DIVISION.

The People's Gas Light and Coke Company *vs.* Maurice Fitzgerald, Town Collector of the Town of South Chicago, Samuel B. Raymond, County Treasurer, and City of Chicago.	In Equity. No. 26,168.

DECREE.

Record.

This cause came on to be further heard at this term, and was argued by counsel, and thereupon,
150½ upon consideration thereof, it is ordered that all objections and exceptions to the Master's reports be, and the same are hereby overruled, and that the Master's reports and each of them be, and they are hereby approved and confirmed; and the court finds that all the material allegations of the bill of complaint are sustained by the evidence, and that the equities of the case are with the complainant; and thereupon the court doth order, adjudge and decree as follows:

That the assessment made by the State Board of Equalization of the State of Illinois, at its session in 1901, against the complainant, the People's Gas Light and Coke Company, upon its capital stock for the year 1900, (the net amount of said assessment being $9,217,067), was made under the coercive influence of a writ of mandamus issued by the Circuit Court of Sangamon County, in the State of Illinois, and did not represent the real or independ-

ent judgment of the said State Board of Equalization, and that the assessments made by said State Board of Equalization, at its meeting held in 1901, upon the capital stock of the said complainant, and upon the capital stock of the other corporations named in the writ of mandamus above mentioned, for the year 1900, was in fact made upon a materially different basis from that upon which the capital stock of all other corporations of the same class were assessed by the said State Board of Equalization for the year 1900, and also upon a basis materially different from that upon which all other taxable property in the State of Illinois was assessed for the year 1900, that said assessment made in 1901 upon the capital stock of the complainant for the year 1900, was made under the coercive influence of said mandamus, without the exercise or application of the judgment of the State Board of Equalization, or the members thereof, to the ascertainment of the value of said capital stock, and without the State Board of Equalization, either in fact or in form, taking into consideration the basis upon which all other taxable property in the State of Illinois was assessed and taxed for the year 1900, and without in fact or in form equalizing the valuation or assessment of the capital stock of said complainant for the year 1900 with all or any of the assessments made upon the other taxable property in the State of Illinois for the year 1900, with the result that the said assessment on the capital stock of complainant, made in the year 1901 for the year 1900 was made on a much higher basis than that upon which the other taxable property of the State of Illinois was assessed and taxed for

the year 1900; and that said assessment upon said capital stock for the year 1900 was and is unjust and inequitable: that the making of said assessment as aforesaid in 1901, upon the capital stock of the said complainant, and the extension of taxes thereon, and the attempt to enforce the payment of such taxes so extended, from complainant, was and is a violation of the Fourteenth Amendment to the Constitution of the United States, and that the attempt to enforce the collection from complainant of the taxes extended on said reassessment will, unless restrained, result in a multiplicity of suits, and in irreparable injury to the complainant.

An order was entered herein on the 28th day of June, 1902, as a condition precedent to the granting of the temporary relief prayed for in the bill of complaint herein, that complainant should pay, in addition to the tax already paid upon the first or original capital stock assessment for the year 1900, the further sum of $279,997.48, making a total capital stock tax to be paid by the complainant for the year 1900 of $317,648.98, which is found and decreed by the court to be all that complainant should equitably be required to pay as a capital stock tax for the year 1900. Said additional sum of $279,997.48 has been paid by complainant to the County Treasurer of Cook County, in compliance with said order, making the total amount paid by complainant, as taxes upon its capital stock for the year 1900, the said sum of $317,648.98.

It is therefore further ordered, adjudged and decreed that the said assessment of $9,217,067 on the capital stock of complainant, made by the State Board of Equalization in the year 1901 for the year

1900, and all taxes levied and extended thereon, and now spread upon the books of the tax collecting agencies in the City of Chicago, County of Cook and State of Illinois, for collection, be and they are, and each of them is, illegal, null and void, and that the defendants, Maurice Fitzgerald, Town Collector of the Town of South Chicago, and his successor and successors in office, as such town collector, and the defendant, Samuel B. Raymond, County Treasurer of Cook County, Illinois, and *ex-officio* County Collector of said county, and his successor and successors in office, as such county treasurer and *ex-officio* county collector, and the defendant, the City of Chicago, and each of them, and each and every of their respective agents, deputies, servants, attorneys and representatives be, and they are, and each of them is, hereby perpetually enjoined and restrained from in any wise levying or collecting, or in any manner attempting, directly or indirectly, to levy or collect, or to enforce against the complainant, or against any of its property, said tax or taxes, or any or either of them, or any part thereof.

It is further ordered, adjudged and decreed that the costs of this cause be taxed against complainant.

P. S. Grosscup.

IN THE CIRCUIT COURT OF THE UNITED STATES,
NORTHERN DISTRICT OF ILLINOIS,
EASTERN DIVISION THEREOF.

Peoples Gas Light and Coke Company,
Complainant,
vs.
Samuel B. Raymond, County Treasurer of Cook County, Illinois, and *ex-officio* County Collector of Cook County, Illinois, and John J. Hanberg, his successor as County Treasurer of Cook County, Illinois, and *ex-officio* County Collector of Cook County, Illinois, and *ex-officio* Town Collector of the Town of South Chicago, and the City of Chicago,
Defendants.

In Chancery.
No. 26,168.

IT IS HEREBY STIPULATED between Samuel B. Raymond, County Treasurer of Cook County, Illinois, and *ex-officio* County Collector of Cook County, Illinois, and John J. Hanberg, his successor as Treasurer of Cook County, Illinois, and *ex-officio* County Collector of Cook County, Illinois, and *ex-officio* Town Collector of the Town of South Chicago, and the City of Chicago, appellants, and Peoples Gas Light and Coke Company, appellee, that a complete transcript of the record in the case of the *Chicago Union Traction Company* v. *Samuel B. Raymond, County Collector, et al.*, No. 26,609, in the Circuit Court of the United States, for the Northern District of Illinois, as per præcipe now on file with the clerk of said court, shall be filed in the Supreme Court of the United States by counsel for appellants.

And it is Further Stipulated that the clerk of said Circuit Court may prepare and transmit to the clerk of the Supreme Court of the United States, at Washington, D. C., the following pleadings, proceedings and papers, which are different in this cause from the corresponding pleadings, proceedings and papers in said cause of the *Chicago Union Traction Company* v. *Samuel B. Raymond et al.*, No. 26,609:

1st. Bill of Complaint, filed February 21st, 1902;

2nd. Answer of the defendants, filed June 28, 1902;

3rd. Master's report, filed June 9, 1902, together with the depositions of all witnesses filed on said 9th day of June, 1902, and attached to said Master's report, together with all exhibits accompanying the same;

4th. Answer of City of Chicago, filed May 19, 1906;

5th. Final decree, entered July 25, 1906;

6th. Order entered August 10, 1906, correcting final decree of July 25, 1906;

7th. Petition for appeal and assignment of errors of defendants, filed August 10, 1906;

8th. Appeal bond of defendants, filed September 5, 1906;

9th. Pages 383 to 423, both inclusive, of the transcript of the evidence and exhibits filed with the Master's report of November 9, 1904 and made a part of said report.

And, inasmuch as many of the papers, pleadings, proceedings and orders in this cause are identical with the corresponding papers, pleadings, proceed-

ings and orders in said cause of the *Chicago Union Traction Company* v. *Samuel B. Raymond et al.*

Now, it is Hereby Further Agreed that for the purpose of considering this appeal, the transcript of the record in this cause to be used in the Supreme Court of the United States shall consist of the papers, pleadings, proceedings and orders contained in the transcript of the record filed in the said cause of the *Chicago Union Traction Company* v. *Samuel B. Raymond et al.*, in the Supreme Court of the United States, which it is hereby agreed is identical with the corresponding pleadings, papers, proceedings and orders had in this cause, except in so far as the transcript in this cause has been made up by filing a transcript of the papers, records, proceedings and orders above specifically enumerated. Provided, however, that either party hereto may at any time take up to said Supreme Court by supplemental transcript of the record, any and all other papers, pleadings, proceedings or orders, had in this cause in the said Circuit Court and not above specifically enumerated.

And it is Further Stipulated that the printed transcript of the record in this cause may be made up as follows: The pleadings, proceedings and papers in this cause shall be printed in their order, except where such pleadings, proceedings or papers consist of the record filed in the said cause of the *Chicago Union Traction Company* v. *Samuel B. Raymond et al.*, when, instead of printing the said record of said last mentioned cause in full in the places where the same belongs, reference shall be made to the page in the printed transcript of the record in said cause of the *Chicago Union Trac-*

tion Company v. *Samuel B. Raymond et al.*, on which is printed said corresponding pleading, proceeding or paper, and a complete printed transcript of the record in said cause of the *Chicago Union Traction Company* v. *Samuel B. Raymond et al.* shall be attached to and bound in with said printed transcript of the record in this cause.

PEOPLES GAS LIGHT AND COKE COMPANY,

By SEARS, MEAGHER & WHITNEY,
Its Solicitors.

CITY OF CHICAGO, SAMUEL B. RAYMOND, COUNTY COLLECTOR, AND ALL OTHER DEFENDANTS,

By HARRY A. LEWIS,
WILLIAM F. STRUCKMANN,
JAMES HAMILTON LEWIS and
DAVID K. TONE,
Their Solicitors.

IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1906.

No. 428

SAMUEL B. RAYMOND, County Treasurer of Cook County, Illinois, and *ex officio* County Collector of Cook County, Illinois; JOHN J. HANBERG, his Successor as such County Treasurer and County Collector et al.,

Appellants,

vs.

THE PEOPLES GAS LIGHT AND COKE COMPANY.

Appeal from the Circuit Court of the United States for the Northern District of Illinois.

APPELLANTS' BRIEF.

STATEMENT OF THE CASE.

On the 14th day of February, 1902, appellee filed its bill of complaint (Trans., 2) against Samuel B. Raymond, County Treasurer of Cook County, Illinois, and ex-officio County Collector of said county, and Maurice Fitzgerald, Town Collector of the Town of South Chicago in said county, seeking to enjoin said officials from enforcing against appellee, a certain tax levied pursuant to an assessment made upon

the capital stock and franchises of appellee, by the State Board of Equalization of the State of Illinois on the 22nd of November, 1901, as and for the first of April, 1900.

The appellee was a corporation engaged in manufacturing, selling and distributing gas in the City of Chicago, on the first day of April, 1900.

The statutes of the State of Illinois provide that a County Board of Assessors, consisting of three persons shall assess the tangible property of corporations doing business within the State of Illinois; and the Illinois law further provides that the capital stock and franchises of corporations pursuing the kind of business that appellee was engaged in shall be assessed by the State Board of Equalization. The members of the said State Board of Equalization in assessing the capital stock and franchises of corporations act as original assessors.

Said Board is also charged with the duty of equalizing the value of real and personal property between the several counties, after said values have been certified by the State Auditor to the county officers. All assessments made by said Board as original assessors, are certified to the county officials, and used as the basis of extending the taxes against the corporation so assessed, on the amount so certified.

Appellee was required, under the laws of the State of Illinois, to deliver to the county assessors, for the year 1900, a statement showing the market value, or if no market value then the actual value, of its shares of stock. This statement was to be forwarded to the State Board of Equalization and used by said Board in making an assessment of the

capital stock and franchises of appellee. Appellee made out a statement, which was duly forwarded to the State Board, but that statement (Trans., 138) contained no information in reference to either the market value or the actual value of appellee's shares of stock.

The Illinois law also provided that if the corporation failed to make out a statement, it should be the duty of the County Assessors to make out a schedule getting the information called for from the best obtainable sources.

The State Board met for its annual session September 11, 1900, but took no steps towards assessing the capital stock and franchises of appellee. On November 10, 1900, the State's Attorney of Sangamon County filed a petition for a mandamus on the relation of certain tax payers, in the Circuit Court of said county, against said State Board of Equalization, alleging that said Board wilfully neglected and refused, during the year 1899, to assess the capital stock and franchises of appellee, and numerous other corporations in said petition named, and that said Board claimed and pretended that it would, at its then session, also refuse to assess the capital stock and franchises of said corporations, or would assess the same at such a figure as to produce a mere nominal tax. Said petition set forth the market value of said stock and that the same was well known to said Board, and said petition prayed that a writ of mandamus might issue, directing said Board to make an assessment of the capital stock and franchises of appellee.

On December 3, 1900, said State Board of Equalization adjourned, and on that day said Board, for

the purpose of defeating the prosecution of said mandamus suit, made a mere nominal assessment of the capital stock and franchises of appellee. Said assessment was certified to the County Clerk, and the taxes extended pursuant thereto paid before said mandamus suit was tried.

During the month of April, 1901, said mandamus suit was tried in the Circuit Court, and on the first of May, 1901, a judgment was entered by that court awarding a writ of mandamus as prayed for in said petition.

An appeal was taken from said judgment by the State Board, and on the 24th day of October, 1901, the Supreme Court of Illinois handed down an opinion affirming said judgment. *The State Board of Equalization* v. *People,* 191 Ill., 528. The Supreme Court of Illinois held that the assessment of the capital stock and franchises of appellee made by the Board on December 3, 1900, was so grossly inadequate that it was for that reason fraudulent and void.

Thereafter the mandate of the Supreme Court was duly filed in the Circuit Court, and on the 2nd day of November, 1901, there issued a writ of mandamus against the members of the State Board of Equalization, commanding them to assess the capital stock and franchises of the appellee and certain corporations therein named, and in obedience to said writ of mandamus, the said State Board of Equalization on the 22nd of November, 1901, made an assessment, amounting to the sum of $9,217,067.00, on the capital stock and franchises of appellee as and for the 1st day of April, 1900; the taxes amounting to the sum of $725,183.17 were duly extended by the County

Clerk on said assessment, and this bill of complaint is filed to enjoin the collection of said taxes, and the enforcement of said assessment.

The various allegations of appellee's bill of complaint, stripped of unnecessary verbiage, amount to this: That the Constitution and Laws of the State of Illinois require uniformity and equality in the assessment of all property within the state, and that the State Board of Equalization, in violation of those constitutional and statutory provisions, made an assessment upon the capital stock and franchises of appellee that was unequal, discriminating and unfair, and that the above result was brought about in the following manner:

First. The assessment of other property in the state, including that of railroad and telegraph companies and other corporations for the year 1900, as finally equalized by the State Board of Equalization, did not exceed one-fifth of 70 per cent of its cash value, whereas the capital stock and franchises of appellee and the other corporations that were made defendants to said mandamus suit were assessed at one-fifth of their full cash values.

Second. That the assessment of the capital stock and franchises of appellee and the other corporations above named was excessive, unreasonable and much higher than the assessments made upon the property of other persons and corporations for the same year.

Third. That the assessment of the capital stock and franchises of appellee, made by the State Board on December 3, 1900, and the payment in January, 1901, of the taxes extended pursuant to said assess-

ment, constituted a full discharge by the appellee of all taxes that could be levied under the laws of the State of Illinois, against its capital stock and franchises.

Fourth. That the members of the State Board of Equalization, in making the assessment complained of, did not exercise their own independent judgment, but believed that they were coerced by the writ of mandamus of the Circuit Court, into making the assessment, for the amount and in the manner, returned.

By reason of the foregoing proceedings, it was charged in the bill of complaint that the appellee was deprived of its property without due process of law, and denied the equal protection of the laws, in violation of the Fourteenth Amendment.

A demurrer was filed to appellee's bill of complaint, which demurrer was overruled by the court, and subsequent thereto the defendants filed their answer (Trans., 34), admitting that the assessment was made and the taxes extended pursuant thereto as alleged in appellee's bill of complaint, but denying specifically all charges of fraud, illegality, inequality and discrimination. A replication was filed to said answer and the case was thereafter heard upon proof offered by the respective parties before Master in Chancery Bishop of said court (C. U T. Co. Trans., 98).

On the 19th day of May, 1906, the City of Chicago filed an intervening petition alleging that it was the beneficial owner of the greater portion of the taxes here in controversy, and asking that it be made a party to this cause, and that it be permitted to file

an answer, and thereafter (C. U. T. Co. Trans., 1267) an order was entered granting the prayer of said petition.

A vast amount of evidence was taken before the Master in behalf of the appellee, but an examination of this record will disclose that all of that evidence, in so far as it was material to the issues in this case, may be classified under the following subdivisions:

1. The testimony of four out of twenty of the members of the State Board of Equalization, who made the assessments complained of in reference to the operation of their own minds at the time the assessments were made.

2. Certain extracts from the reports of the Railroad and Warehouse Commissioners for the State of Illinois and the reports of the Board of Agriculture of the State of Illinois.

3. Certain extracts from the records of the Union Stock Yards and Transit Company in reference to the value of horses, cattle and hogs within the State of Illinois and certain extracts from Brown's Directory of American Gas Companies, both of said publications being private compilations.

4. A statement purporting to show the number of horses, cattle and hogs in the State of Illinois, returned for taxation in the year 1900 by the local assessors, as compared with the number purported to be shown in the state by the United States Census Report of 1890; and certain statements purporting to show the aggregate assessments and the total value of the property assessed in the State of Illinois and Cook County from 1873 to 1900.

5. The records of the proceedings of the State

Board of Equalization showing the assessments made on the capital stock and franchises of the corporations above named during the years 1899, 1900 and 1901, and certain extracts from the records of the board for prior years.

6. The testimony of the officers and agents of the complainant corporations in reference to the amounts and values of their properties in the City of Chicago on the 1st day of April, 1900.

The first four items of evidence above quoted were received in evidence over the objection of appellants' counsel.

On the 25th day of April, 1902, when the application of appellee for a preliminary writ of injunction came on to be heard, the court entered an order (C. U. T. Co. Trans., 3) that the capital stock and franchises of appellee should be assessed by capitalizing the true net income of appellee for the fiscal year covering April 1, 1900, upon a basis of six per cent, and ordered said cause referred to a Master, and directed said Master to ascertain the amount of additional tax to be paid by appellee pursuant to said plan.

The Master filed a preliminary report (Trans., 43) in which said Master reported that appellee should pay $279,997.48 in addition to the tax previously paid, said sum to be in full of all taxes to be paid by appellee upon its capital stock and franchises for the year 1900.

On November 19, 1904, the Master filed his final report in this case (C. U. T. Co. Trans., 97), in which he found that the material allegations of complainant's bill had been proved and that no further

taxes were due from appellee under the plan of assessment promulgated by the Circuit Court.

To that report exceptions were duly filed and thereafter said cause came on to be heard before the court, and on the 25th of June, 1906, the Circuit Court handed down an opinion (C. U. T. Co., Trans., 1277), in which he held that the material allegations of appellee's bill of complaint had been proved; that the payment theretofore made of $279,997.48 was all the taxes that appellee should pay and that all of the appellants be perpetually enjoined from collecting or attempting to collect the balance of said taxes, amounting to the sum of $407,534.19.

From that decree an appeal was prayed by the appellants to this court.

Appellants' various assignment of errors have been classified in the specifications of errors under four subdivisions:

I. The Circuit Court erred in refusing to dismiss this cause for want of jurisdiction.

II. The Circuit Court erred in admitting incompetent evidence in behalf of appellee and in refusing to hold that there was no competent evidence tending to prove the allegations of appellee's bill of complaint.

III. The Circuit Court erred in not holding that appellee has not made out a case entitling it to relief in a court of equity.

IV. The Circuit Court erred in enjoining the collection of the taxes in question without requiring appellee to pay $407,534.19 in addition to the amount already paid.

The various assignments of error will be considered in our argument under the same subdivisions.

SPECIFICATIONS OF ERROR.

I.

The Circuit Court erred in refusing to dismiss this cause for want of jurisdiction.

First. The said Circuit Court erred in failing and refusing to dismiss this cause for want of jurisdiction in a Federal Court, appearing upon the face of complainant's bill of complaint.

Second. The said Circuit Court erred in failing to dismiss complainant's bill of complaint for want of jurisdiction, because the undisputed evidence in this record shows that a Circuit Court of the United States is without jurisdiction to hear and determine the matters and things charged in complainant's bill.

Third. The said Circuit Court erred in refusing to hold that the allegations of the complainant's bill of complaint show that complainant has not been denied by the State of Illinois or its officers, any right, privilege or immunity guaranteed to the complainant by the Fourteenth Amendment to the Constitution of the United States.

Fourth. The said Circuit Court erred in refusing to hold that the allegations of such complainant's

bill of complaint show that the complainant has not been deprived of its property without due process of law, in violation of the Constitution of the United States.

Fifth. The said Circuit Court erred in refusing to hold that the State of Illinois had not denied to the complainant the equal protection of its laws within its jurisdiction.

Sixth. The said Circuit Court erred in refusing to find that the sole grievance complained of in complainant's bill of complaint is that the officers of the State of Illinois charged with the duty of making a fair and equal assessment of the complainant's capital stock, have made an assessment that is unfair and unequal, contrary to and in violation of the Constitution and the Laws of the State of Illinois; and said Circuit Court likewise erred in assuming and retaining jurisdiction of this cause, when, upon the face of complainant's bill of complaint, it appears that the said Circuit Court was without jurisdiction.

Seventh. The said Circuit Court erred in refusing to hold that inasmuch as the complainant and defendants were all citizens of and residents of the State of Illinois, a Federal Court had no jurisdiction in this cause to hear and determine the fairness, equality or regularity of the assessment made against the complainant, and the said Circuit Court erred in refusing to dismiss this cause for want of jurisdiction.

II.

The Circuit Court erred in admitting incompetent evidence in behalf of appellees, and in refusing to hold that there was no competent evidence tending to prove the allegations of appellee's bill of complaint.

Ninth. The said Circuit Court erred in overruling the objections and exceptions and each and every of said objections and each and every of said exceptions to the said Master's reports and to each of them.

Tenth. The said Circuit Court erred in approving and confirming the Master's reports and each of them, filed in this cause.

Eleventh. The said Circuit Court erred in failing and refusing to sustain the objections and each and every of the same filed by the defendants to said Master's reports and to each of said reports.

Twelfth. The said Circuit Court erred in finding that all of the material allegations of the bill of complaint are sustained by the evidence and likewise in finding that the equities of the case are with the complainant.

Thirteenth. The said Circuit Court erred in failing to find that the material allegations of the bill of complaint in this cause have not been proved by any competent evidence.

Fourteenth. The said Circuit Court erred in finding that the assessment made by the State Board of Equalization of the State of Illinois at its session in 1901 against the complainant, upon its capital stock for the year 1900, amounting to $9,217,067, was

made under the coercive influence of a writ of mandamus, issued by the Circuit Court of Sangamon County, in the State of Illinois, and did not represent the real or independent judgment of the said State Board of Equalization.

Fifteenth. The said Circuit Court erred in failing and refusing to find that the assessment, amounting to $9,217,067, made by the State Board of Equalization of the State of Illinois at its session in 1901 against the complainant, upon its capital stock for the year 1900, was made by the said State Board of Equalization in the exercise of its own judgment and upon its official responsibility.

Sixteenth. The said Circuit Court erred in finding that the assessments made by the State Board of Equalization at its meeting, held in 1901, upon the capital stock of said complainant and upon the capital stock of the other corporations for the year 1900, named in the writ of mandamus, issuing from the Circuit Court of Sangamon County, Illinois, were in fact made upon a materially different basis from that upon which the capital stock of all other corporations of the same class were assessed by the State Board of Equalization for the year 1900, and also upon a basis materially different from that upon which other taxable property in the State of Illinois was assessed for the year 1900.

Seventeenth. The said Circuit Court erred in refusing and failing to find that the only competent evidence contained in record in this cause showed that the assessments made by the State Board of Equalization at its meeting held in 1901 upon the capital stock of said complainant, and upon the

capital stock of the other corporations for the year 1900, named in the writ of mandamus issuing from the Circuit Court of Sangamon County, Illinois, were in fact made upon the same or a similar basis, as that upon which the capital stock of all other corporations of the same class were assessed by the State Board of Equalization for the year 1900, and also that said assessments as to each of said corporations were made upon the same or a similar basis upon which all other taxable property in the State of Illinois was assessed for the year 1900.

Eighteenth. The said Circuit Court erred in finding that said assessment made in 1901 on the capital stock of complainant was made under the coercive influence of a writ of mandamus, issuing from the Circuit Court of Sangamon County, Illinois, without the exercise or application of the judgment of the State Board of Equalization or the members thereof, to the ascertainment of the value of said capital stock, and without the State Board of Equalization, either in fact or in form, taking into consideration, the basis upon which all other taxable property in the State of Illinois was assessed and taxed for the year 1900 and without in fact or in form equalizing the valuation or assessment of the capital stock of said complainant for the year 1900 with all or any of the assessments made upon the other taxable property in the State of Illinois for the year 1900, with the result that the said assessment made on the capital stock of the complainant, in the year 1901 for the year 1900, was made on a much higher basis than that upon which the other taxable property of the State of Illinois was assessed and taxed for the year 1900.

Nineteenth. The said Circuit Court erred in refusing and failing to find that the assessment made in the year 1901 on the capital stock of the complainant, was made without any coercion and in the exercise of the independent judgment of the State Board of Equalization and the members thereof, for the purpose of ascertaining the fair value of the capital stock of said complainant, and that said assessment was obtained and resulted from the said State Board of Equalization equalizing the value and assessment of the capital stock of said complainant for the year 1900 with all of the assessments made upon other taxable property in the State of Illinois, and that the assessment so arrived at was just and fair to the said complainant.

Twentieth. The said Circuit Court erred in finding that the making of the assessment for the year 1900 upon the capital stock of said complainant, and the extension of the taxes thereon, and the attempt to enforce the payment of such taxes so extended, from complainant, was and is a violation of the Fourteenth Amendment to the Constitution of the United States.

Forty-second. The said Circuit Court erred in admitting and receiving in evidence, over the objection and exception of defendants' counsel, oral testimony for the purpose of explaining, varying and contradicting the official acts, records and proceedings of the State Board of Equalization for the years 1900 and 1901, wherein and whereby said Board made the assessment against the property of the complainant sought to be enjoined in this cause.

Forty-third. The said Circuit Court erred in re-

fusing and failing to hold that parol evidence was incompetent, for the purpose of explaining, varying or contradicting the official acts, records and proceedings of the State Board of Equalization of the State of Illinois, in reference to the assessments on the capital stock of the complainant, made by the said board in the year 1901, for the year 1900.

Twenty-third. The said Circuit Court erred in admitting and receiving in evidence over the objection and exception of defendant's counsel, the following testimony of Samuel M. Barnes, a member of the State Board of Equalization, of the State of Illinois, for the years 1900 and 1901:

I heard the members of the State Board of Equalization discuss the remarks of the court on the application for an extension of time to make return to the writ of mandamus. My recollection of one remark that I heard was that it was a mere question of the Board's getting their pencils and getting to work and they ought to do it. I heard one of the Board say that the court was very vituperative in this matter. I think it was either Mr. Schaefer or Mr. Hopkins of the Committee on the Board who was over there listening to the court. The impression I got was very strongly fixed in my mind and it was that his attitude was intensely hostile to the Board and I was told by those who heard him that it was in the shape of a roast from start to finish as far as his manner was concerned. Of course, I cannot just quote the language he used, but rather his manner I was told was vituperative, absolutely so. I was told this by members of the State Board of Equalization who were present and heard the remarks of the judge. The reassessment as we de-

termined it, was made with a view to satisfying the court, the order of the court. We made no deduction, if I remember rightly, on account of that all of these Companies but two had in 1900 been assessed upon their capital stock. We did not take into consideration the fact, if it was a fact that other property in the state had not been assessed at the maximum more than 70 per cent of its value. The court, in his discussion, gave an illustration of the manner in which the assessment should be made and I think he made an example of the Gas Company here; in any event one of the companies he made an example of that and in that example he said just how the assessment should be made and as this was an order of the court, we followed that example that he gave in a general way, for all these assessments. Mr. Smith and Mr. Greenacre furnished these tables (referring to complainant's Exhibit A, 10/23/03) said document being a compilation of the value of the capital stock of said Companies, prepared by Miss Goggin and Miss Haley, as members of the Teachers' Federation. Our desire in making this reassessment was in order to satisfy the Circuit Court of Sangamon County, because it was not my judgment that it was a proper assessment. The general idea seemed to be with the committee on capital stock that the action of the committee was dictated by the court. It was discussed between the committee on capital stock at about the time the reassessment was reported to the Board and the first object to be attained was to satisfy the court. The assessments that were made subsequent to this assessment of 1900 were based on what we believed to be the law and in a general

way on the judgment of the members, that is on the real values. The assessment for 1901 we regarded as representing our real judgment and the other we did to satisfy the court. The restraining order issued by the court was dissolved on the 22nd of November, and I think it was a very short time after that on that day that we made our return to the writ.

Twenty-fourth. The said Circuit Court also erred in admitting in evidence, over the objection of defendants' counsel, the testimony of Frank P. Martin, a member of the State Board of Equalization, which was in substance the same as the testimony of said Barnes.

Twenty-fifth. The said Circuit Court erred in receiving in evidence, over the objection of defendants' counsel, the testimony of John S. Cruttenden, a member of the State Board, which was in substance the same as the testimony of said Barnes.

Twenty-sixth. The said Circuit Court erred in receiving in evidence, over the objection of defendants' counsel, the testimony of Louis D. Hirsheimer, a member of the State Board of Equalization, which was in substance the same as the testimony of said Barnes.

Twenty-eighth. The said Circuit Court erred in receiving in evidence, over the objection of the defendant, the report of the Railroad and Warehouse Commissioner of the State of Illinois for the year 1900, and the report of the Commissioner of Agriculture of the State of Illinois for the same year, and Brown's Directory of American Gas Companies.

Thirty-second. The said Circuit Court erred in

admitting in evidence, over the exception of defendant, the statement, being Ward Exhibit C, purporting to show live stock returned for taxation in 1900 by local assessors as compared with live stock according to the U. S. Census returns.

III.

The Circuit Court erred in refusing to hold that appellee had not made out a case entitling it to relief in a court of equity.

Twenty-second. The said Circuit Court erred in ordering, adjudging and decreeing that the assessment of $9,217,067 on the capital stock of the complainant, made by the State Board of Equalization in the year 1901 for the year 1900, and the taxes levied and extended thereon and now spread upon the books of the tax collecting agencies of the City of Chicago, County of Cook and State of Illinois, for collection, are, and each of them is, illegal, null and void, and that the defendants, Samuel B. Raymond, County Treasurer of Cook County, Illinois, and *ex-officio* County Collector of Cook County, Illinois, and Maurice Fitzgerald, Collector of the Town of South Chicago, and John J. Hanberg, his successor as County Treasurer of Cook County, Illinois, and *ex-officio* County Collector of said county, and *ex-officio* Town Collector of the Town of South Chicago, in said county, and his successor and successors in office as such County Treasurer and *ex-officio* County Collector and *ex-officio* Town Collector of said Town of South Chicago, and the defendant, Maurice Fitzgerald, Town Collector of the Town of South Chicago, and the defendant, the City

of Chicago, and each of them and each and every of their respective agents, deputies, servants, attorneys and representatives, be and are perpetually enjoined and restrained from in anywise levying or collecting or in any manner attempting, directly or indirectly, to levy or collect or to enforce against the complainant or against any of its property, the said tax or taxes or any or either of them, or any part thereof.

IV.

The Circuit Court erred in enjoining the collection of the tax in question.

Twenty-first. The said Circuit Court erred in entering the order on the 28th day of June, 1902, to the effect that the complainant should pay, in addition to the tax already paid, upon the first or original capital stock assessment for the year 1900, the further sum of $279,997.48, making a total capital stock tax to be paid by the complainant for the year 1900 of $317,648.98, which was found and decreed by the court to be all that complainant should equitably be required to pay as a capital stock tax for the year 1900, for said Circuit Court should have found, if it had jurisdiction of this cause and of the parties hereto, that the complainant should be required to pay the aggregate amount of all taxes assessed against it in the year 1901 as and for the year 1900 upon its capital stock, aggregating $9,217,067.

Twenty-second. The said Circuit Court erred in ordering, adjudging and decreeing that the assessment of $9,217,067 on the capital stock of the complainant, made by the State Board of Equalization in the year 1901 for the year 1900, and the taxes

levied and extended thereon and now spread upon the books of the tax collecting agencies of the City of Chicago, County of Cook and State of Illinois for collection, are, and each of them is, illegal, null and void, and that the defendants, Samuel B. Raymond, County Treasurer of Cook County, Illinois, and *ex-officio* County Collector of Cook County, Illinois, and Maurice Fitzgerald, Collector of the Town of South Chicago, and John J. Hanberg, his successor as County Treasurer of Cook County, Illinois, and *ex-officio* County Collector of said County and *ex-officio* Town Collector of the Town of South Chicago in said county and his successor and successors in office as such County Treasurer and *ex-officio* County Collector and *ex-officio* Town Collector of said Town of South Chicago, and the defendant, Maurice Fitzgerald, Town Collector of the Town of South Chicago, and the defendant, the City of Chicago, and each of them and each and every of their respective agents, deputies, servants, attorneys and representatives, be and are perpetually enjoined and restrained from in anywise levying or collecting or in any manner attempting directly or indirectly, to levy or collect or to enforce against the complainant or against any of its property, the said tax or taxes, or any or either of them, or any part thereof.

BRIEF OF ARGUMENT.

I.

THE CIRCUIT COURT ERRED IN REFUSING TO DISMISS THIS CAUSE FOR WANT OF JURISDICTION.

(a) Equality and uniformity of taxation is not a right guaranteed by the Federal Constitution.

(b) Where the ministerial officers of a state, contrary to the constitution and laws of that state, deprive a person of his property, without due process of law, no federal question is presented, for their acts will not be imputed to the state, but in such a case it will be presumed that the courts of the state will give full relief.

(c) The session of the State Board was public, and appellee had an opportunity to be present and be heard. This constituted due process of law.

II.

THE CIRCUIT COURT ERRED IN ADMITTING INCOMPETENT EVIDENCE IN BEHALF OF APPELLEE AND IN REFUSING TO HOLD THAT THERE WAS NO COMPETENT EVIDENCE TENDING TO PROVE THE ALLEGATIONS OF APPELLEE'S BILL OF COMPLAINT.

(a) The testimony of the individual members of the State Board in reference to the operation of their minds at the time they made the assessment complained of was incompetent.

(b) The extracts from the report of the Railroad and Warehouse Commissioners and the Board of Agriculture were incompetent.

(c) The figures taken from the books of the

Union Stock Yards and Transit Company and Brown's Directory of American Gas Companies were incompetent.

(d) The alleged discrepancy between the Census Report and the Assessors' returns with reference to the amount of live stock within the State of Illinois, during the year 1900, did not prove any issue in this case.

(e) The records of the State Board did not sustain the allegations of appellee's bill.

(f) The testimony of the officers of appellee in reference to the value of its property on April 1, 1900, did not make out a case.

III.

THE CIRCUIT COURT ERRED IN REFUSING TO HOLD THAT APPELLEE HAD NOT MADE OUT A CASE ENTITLING IT TO RELIEF IN A COURT OF EQUITY.

(a) If the re-assessment complained of was void and illegal because the Board had exhausted its power in making the first assessment, then appellee had an adequate remedy at law, for it could have paid the void assessment and then have recovered the money back.

(b) Overvaluation of property by an assessing body, unaccompanied with fraud or bad faith, furnishes no ground for equitable intervention.

(c) Appellee was guilty of *laches* and iniquity, and has not offered to do equity.

IV.

THE CIRCUIT COURT ERRED IN ENJOINING THE COLLECTION OF THE TAX IN QUESTION WITHOUT REQUIRING APPELLEE TO PAY $407,534.19, BEING THE AMOUNT NOW DUE IN ADDITION TO THE TAX ALREADY PAID.

(a) The Circuit Court erred in assessing appellee upon its alleged net income instead of upon the fair market value of its capital stock.

(b) There was no competent evidence tending to show the net income of appellee.

ARGUMENT.

I.

THE CIRCUIT COURT SHOULD HAVE DISMISSED THIS CAUSE FOR WANT OF JURISDICTION.

The Constitution of the State of Illinois (Sec. 1, Art. 9) guarantees to persons and corporations within the states equality and uniformity of taxation. The statutes of the State of Illinois enacted pursuant thereto provide (Sec. 108, Hurd's Revised Statutes, 1899, p. 1412) that the State Board of Equalization shall assess the capital stock and franchises of corporations at its fair cash value.

It will be observed that the foregoing statutory and constitutional provisions imposed upon the State Board of Equalization the duty of assessing the capital stock and franchises of corporations at its fair cash value in precisely the same way that all other property throughout the state is assessed.

The Supreme Court of Illinois has repeatedly held that it is the duty of the assessing officers of the State of Illinois, to carry out the constitutional and statutory provisions, in reference to uniformity and equality of taxation.

The Circuit Judge in his opinion (Trans., C. U. T. Co., 1297) held that the failure of the State Board of Equalization to carry out the constitutional and statutory provision above quoted, guaranteeing equality and uniformity of taxation, constituted a violation of the 14th Amendment, and gave a Circuit Court of the United States jurisdiction of this cause regardless of the citizenship of the parties.

An examination of the decisions of this court will plainly demonstrate that the Circuit Judge was in error in his fundamental assertion in this case, that any substantial departure from the laws of the State of Illinois, on the part of the officers of the State of Illinois, in levying and collecting taxes, constituted the taking of property, without due process of law, in violation of the Federal Constitution.

A.

The law is well settled by the decisions of this court that equality and uniformity of taxation is not a right guaranteed by the Federal Constitution.

The following are a few of many decisions of this court laying down the above rule:

State Railway Tax Cases, 92 U. S., 575, 618.

Davidson v. *Board of Admrs. of New Orleans*, 96 U. S., 97.

Kelly v. *City of Pittsburgh*, 104 U. S., 78.

Merchants & Manufacturers Nat. Bank v. *Pennsylvania*, 167 U. S., 461-4.

Henderson Bridge Co. v. *City of Henderson,* 173 U. S., 592.

Magoun v. *Ill. Trust & Sav. Bank,* 170 U. S., 283, 293, 295.

Connolly v. *Union Sewer Pipe Co.,* 184 U. S., 540, 562.

State of Missouri ex rel. Hill v. *Dockery,* 191 U. S., 165, 170.

Travelers Ins. Co. v. *Connecticut,* 185 U. S., 364, 371.

See also Brief in *C. U. T. Co.* case, p. 39.

Should we, however, concede that equality and uniformity of taxation is guaranteed under the 14th Amendment, appellee's bill of complaint does not make out a case giving the Circuit Court jurisdiction, for the alleged wrongful acts of the State Board of Equalization were not the acts of the state within the meaning of the 14th Amendment.

B.

Where the constitution and the laws of a state are just and fair and the sole grievance of which a party complains is that the officers of the state, charged with executing those laws, have deprived that party of his property, contrary to the constitution and the laws of the state, and in violation of the terms thereof, no federal question is presented, for, under the above circumstances, it will be presumed that the state courts will give full relief against the illegal and unauthorized acts of the officers of the state.

The above proposition is sustained by the following authorities:

Strauder v. *West Virginia,* 100 U. S., 303.

Virginia v. *Rives*, 100 U. S., 313.
Civil Rights Cases, 109 U. S., 3.
Kentucky v. *Powers*, 201 U. S., 1.
Barney v. *City of New York*, 193 U. S., 430.
Manhattan Railway Company v. *City of New York*, 18 Fed., 195.
Coulter v. *Louisville & N. R. Co.*, 196 U. S., 599.

See also Brief in *C. U. T. Co.* case, p. 46.

C.

Equally untenable is the claim in appellee's bill of complaint that under the circumstances there described the appellee was deprived of its property without due process of law, because it had no opportunity to be heard at the time the assessment complained of was levied against it.

The time and place of the sessions of the State Board of Equalization were fixed by law, those sessions were public, and the appellee had an opportunity to be present and be heard. Such a proceeding constitutes due process of law.

Michigan S. R. R. Co. v. *Powers*, 201 U. S., 245, 301.

Public Clearing House Co. v. *Coyne*, 194 U. S., 497.

II.

THERE IS NO COMPETENT EVIDENCE IN THIS RECORD TENDING TO SUSTAIN THE MATERIAL ALLEGATIONS OF APPELLEE'S BILL OF COMPLAINT WITH REFERENCE TO THE ASSESSMENT COMPLAINED OF.

We will take up each of the items of evidence offered by appellee before the Master and show that

that evidence was incompetent and should be disregarded by this court.

A.

The testimony of the individual members of the State Board of Equalization in reference to the operation of their minds at the time they made the assessment complained of was incompetent and should have been excluded by the Circuit Court.

Four out of the twenty members of the State Board of Equalization, that made the assessment complained of, were called to the witness stand before the Master by the appellee and they testified in substance that they did not equalize the assessment of appellee's property with the assessments made upon other property throughout the state for the same year, and that they put down what they believed the State Circuit Court wanted them to put down.

By this means they were permitted to contradict their official acts, as evidenced by the record of the State Board. This evidence was incompetent and should have been excluded.

Wright v. *City of Chicago*, 48 Ill., 285.

Quick v. *Village of River Forest*, 130 Ill., 323-25.

Ryder Estate v. *City of Alton*, 175 Ill., 94.

Republic Life Ins. Co. v. *Pollak*, 75 Ill., 292.

Fayerweather v. *Ritch*, 195 U. S., 276.

Coulter v. *Louisville & N. R. Co.*, 196 U. S., 599.

Brief, *C. U. T. Co.*, p. 79.

B.

The extracts from the report of the Railroad and Warehouse Commissioners and the Board of Agriculture of the State of Illinois were incompetent.

In order to make a public record competent evidence of the facts therein recited, two things are necessary: First, that the fact therein recited is required by law to be reported by the official; second, that the person recording the fact must have had personal knowledge of the matters he was registering at the time.

The above reports do not conform to either of said requirements, and were therefore incompetent.

Hegler v. *Faulkner*, 153 U. S., 109.
Chaffee v. *U. S.*, 18 Wall., 516.
Swift v. *State of New York*, 89 N. Y., 52.
Brief, *C. U. T. Co.*, p. 92.

C.

The figures taken from the books of the Union Stock Yards and Transit Company and from Brown's Directory of American Gas Companies were not competent evidence and should have been excluded.

The above publications were private compilations, and the witness who produced said figures admitted that he had no knowledge as to whether the figures were correct. Under the above circumstances the publications should have been excluded.

State v. *Daniels*, 44 New Hampshire, 383.
Richardson Bros. & Co. v. *Stringfellow*, 100 Ala., 416-418.
Langley v. *Smith*, 3 New York St. Rep., 276.

See also authorities cited in *C. U. T. Co.* Brief, p. 102.

D.

The alleged discrepancy between the United States Census Report and the Assessors' return with reference to the amount of live stock within the State of Illinois during the year 1900 does not tend to prove any fact in this case.

Live stock could be assessed at a different rate and in a different manner than the property of street railroads, gas, telephone and electric light companies, without infringing on the right guaranteed by the Federal Constitution.

E.

The records of the State Board of Equalization do not sustain any of the allegations of appellee's bill.

Appellee offered in evidence certain resolutions contained in the minutes of proceedings of the State Board of Equalization for certain years prior to 1893, to the effect that in the opinion of the board the real and personal property of the state during the years in question had been assessed at less than its full cash value.

Prior to 1898 assessors were required to value property at its fair cash value. By the terms of the Act of July 1st, 1898, assessors were required to set down in one column the full value of real and personal property and in another column one-fifth of said full value, which latter sum should be the assessed value. This statute was enacted for the very purpose of doing away with the practice of under-

valuing property which it is claimed had existed prior thereto. Evidence of undervaluations prior to the Act of 1898 does not tend to prove the existence of undervaluations thereafter.

Coulter v. *Louisville & N. R. Co.*, 196 U. S., 599.

III.

APPELLEE HAS NOT MADE OUT A CASE ENTITLING IT TO RELIEF IN A COURT OF EQUITY.

A.

If the contention of appellee be well taken, namely, that the re-assessment of 1900 was void and illegal because the Board had exhausted its powers in making the first assessment, then appellee had an adequate remedy at law, for it could have paid the void assessment and then have recovered the money back.

Shelton v. *Platt*, 139 U. S., 591.

Allen v. *Pullman Pal. Car Co.*, 139 U. S., 658.

Pacific Express Co. v. *Seibert*, 142 U. S., 339.

B.

Overvaluation of property by an assessing body unaccompanied with fraud or bad faith furnishes no ground for equitable intervention.

There are many general allegations in appellee's bill, but when those allegations are reduced to their lowest terms, the whole bill (aside from the claim that the second assessment was void) is that the property of the appellee was assessed at a higher proportionate amount than was the property of

other persons and corporations throughout the State of Illinois for the same year. The above allegations are insufficient to justify relief in a court of equity.

Pittsburgh C. C. & St. L. R. Co. v. *Backus,* 154 U. S., 421, 434.

Maish v. *Territory of Arizona,* 164 U S., 599, 611.

C.

Before a court of equity will grant an injunction to restrain the collection of a tax on the ground of excessive valuation and unfair discriminations on the part of the assessors, complainant must distinguish by his bill the legal from the illegal part of the tax, and must actually pay the tax which is due; otherwise he is not entitled to relief.

Albuquerque Nat. Bk. v. *Perea,* 147 U. S., 87.

State Railway Tax Cases, 92 U. S., 575, 616.

National Bank v. *Kimball,* 103 U. S., 733.

IV.

THE UNDISPUTED EVIDENCE SHOWS APPELLEE OUGHT TO PAY $407,534.19 MORE THAN IT WAS REQUIRED TO PAY BY THE ORDER OF THE CIRCUIT COURT.

Even if we assume that the Circuit Court had jurisdiction of this cause, that the appellee has established the allegations of its bill by competent evidence, that the re-assessment for the year 1900 was illegal and void, and that the Circuit Court had the power to make a re-assessment, then appellee was only entitled to the following relief:

First, to receive credit for the $37,651.50 paid on the original assessment; second, to have its capi-

tal stock and franchises assessed at 70 per cent of its actual cash value instead of at 100 per cent, which latter sum it is claimed the State Board of Equalization used as the basis for its assessment.

The rules of the State Board of Equalization under which all other corporations were assessed for the year 1900, required that the market value or fair cash value of the corporation's shares of stock should be added to its debt (excluding indebtedness for current expenses) and that the aggregate should be the fair cash value of the capital stock and franchises of such corporation.

The above method of assessment was the one directed to be made by the writ of mandamus of the Circuit Court, and has been held to be the proper method of assessing capital stock and franchises of Illinois corporations under the very statute now in question.

State Board of Equalization v. *People*, 191 Ill., 528.

State Railroad Tax Cases, 92 U. S., 575.

The Circuit Court ignored the fair cash value of the stock of appellee, and capitalized the alleged net income at six per cent (taking such net income from certain lump sums shown by the company's books) and by these means placed so insignificant a valuation upon the capital stock and franchises of appellee that it was permitted to escape the payment of the greater share of its tax for the year 1900.

The Circuit Court, in arriving at the amount of the additional tax to be paid by appellee for the year 1900, followed the computation made by the Master; the Master in turn adopted the figures and method

of computation furnished to him by the company's experts.

We have presented three tables below numbered respectively (1), (2) and (3). Table (1) showing the computation made by the Master, which was approved by the Circuit Court; Table (2) showing the amount of taxes due under the rules of the State Board of Equalization, which were approved by this court in the *State Railroad Tax Cases, supra,* and Table (3) showing the tax still remaining due and unpaid on appellee's own theory, that 1/5 of 70 per cent of the full value of the capital stock and franchises of the appellee should be used instead of the full value, which it is claimed the State Board took.

(1)

Earnings applicable to interest, rentals and taxes, as shown by statement in evidence	$ 4,058,374.95
Deducting depreciation at 6% on personalty	853,285.71
Earnings before deducting taxes.	$ 3,205,089.24
Additional tax	279,997.48
Net income	$ 2,925,091.76
Capitalized at 6%	48,751,529.33
Equalized at 70%	34,126,070.53
1/5 for assessed value	6,825,214.10
Extending tax at .0787	537,144.35
Deducting tax already paid	257,146.87
Leaving to be paid under the decision of the United States Circuit Court	$ 279,997.48

Making an assessment of the capital stock of said corporations in accordance with the rules approved

by this court in the *State Railroad Tax Cases, supra*, we would get the following result:

(2)

Capital stock as required by law	$46,085,335.00
1/5 valuation upon which taxes are to be extended	9,217,067.00
Extending tax at .0787	725,183.17
Deduct tax paid on original assessment	37,651.50
Leaves	$ 687,531.67
Deduct tax assessed by U. S. Cir. Ct.	279,997.48
Tax yet due	$ 407,534.19

The above assessment is made by taking one-fifth of the full value of the capital stock and franchises of the above corporations.

Should we assume that appellee's contention be sound, that one-fifth of 70 per cent of the full value of the capital stock and franchises of the appellee be taken, then we get the following results:

(3)

Full value of capital stock including franchise (C. U. T. Co., Trans., 242)	$63,164,800.00
70% of that amount	44,215,360.00
1/5 of that amount, to make assessed value	8,843,072.00
Deduct equalized assessed value of tangible property (C. U. T. Co., Trans., 242)	3,415,893.00
Leaves net assessed value of capital stock	$ 5,427,179.00
Extend tax at .0787	427,118.98

Deduct tax paid on original assessment		37,651.50
Leaves	$	389,467.48
Deduct tax paid by order of U. S. Cir. Court		279,997.48
Leaves tax remaining unpaid on complainant's own theory of equalizing the full value of the capital stock by taking one-fifth of 70 per cent of the same.	$	109,470.00

It appears from the foregoing figures that if the Circuit Court had followed the method of assessment approved by this court in the *Railroad Tax Cases, supra,* then even after equalizing the value by taking one-fifth of 70 per cent, instead of adopting the novel method of its own, unauthorized by the laws of the state, the appellee would have been required to pay $109,470.00 more than it was required to pay by the order of the Circuit Court.

There are many other inaccuracies in the method of computation which have been fully pointed out in the brief filed in the *Chicago Union Traction Company* case, to which reference is here made for a full discussion of the question. (Brief, *Chicago Union Traction Company,* p. 127.)

C.

The decree of the Circuit Court was also inequitable and unfair in that it permitted the appellee to pay the additional taxes of $279,997.48 on July 1, 1902, and not paying any interest on the same.

Taxes levied for the 1st of April, 1900, became de-

linquent under the laws of the State of Illinois on the 1st of May, 1901, and taxes thereafter remaining unpaid drew interest at the rate of 1 per cent a month. Appellee, by failing to furnish any statement to the State Board of Equalization, of the value of its capital stock and franchises, and by assisting said board in attempting to maintain the first assessment which was expressly held by the State Supreme Court to be fraudulent and void, is legally responsible for the delay in the making of the second assessment. Now, that the appellee has invoked the aid of a court of equity, it should be required to do equity. Equity requires that appellee pay its just burden of taxes and interest at the rate of 5 per cent on that amount from the time it should have been paid to the collecting officers. Appellee had the use of that money from the 1st of May, 1901, up till July 1, 1902, and no reason has been or can be suggested why it should not reimburse the state in that regard.

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GEORGE B. GILLESPIE,
Special Assistant Attorney General of said State;
Solicitors for Appellants.

In the Supreme Court of the United States,

OCTOBER TERM, A. D. 1906.

No. 428.

SAMUEL B. RAYMOND, County Treasurer of Cook County, Illinois, and *Ex-Officio* County Collector of Cook County, Illinois, JOHN J. HANBERG, his successor as such County Treasurer and County Collector, *et al.*,
Appellants,

vs.

THE PEOPLE'S GAS LIGHT AND COKE COMPANY.

APPELLEE'S BRIEF.

Statement.

For many years prior to the events out of which the litigation now at the bar of this court arose, the taxing bodies throughout the State of Illinois systematically and intentionally undervalued property in making the annual assessments on which taxes were extended, collected and paid. In the year 1900 the Teachers' Federation, a local union of public employes of the city of

Chicago, inaugurated a crusade against the public utility corporations of that city to compel these corporations to pay more taxes. The corporations thus made the subject of attack were selected by, and in the discretion of, a single member of the Teachers' Federation styled a "tax investigating committee," who naively stated on the witness stand "our interests, or the interests of those whom we represented in this matter (the Teachers) did not lie outside of Cook County so largely as within the county" (transcript in case No. 424, pp. 630-631); and the corporations so selected were the only ones in the State of Illinois subjected to the final result and effect of that crusade.

By the laws of Illinois the assessment of capital stock and franchises of corporations is committed to the State Board of Equalization, consisting of twenty-two members, elected one from each congressional district. This board meets annually; and while in session in 1900 a petition in mandamus was filed on or about the 10th day of November, in the circuit court of Sangamon County, Illinois, at the relation of Robert C. Steele and Catherine Goggin (the latter a member of the Teachers' Federation) against the individual members of the State Board of Equalization, which petition prayed that a writ of mandamus issue against said members, commanding them to make an assessment for the year 1900 on the capital stock including the franchises of appellee, and of the other public utility corporations above indicated.

Neither appellee, nor any of said public utility corporations, were parties to the mandamus proceeding, and indeed, when that case reached the Supreme Court of the State, an application to be heard, made by counsel for one of the corporations affected, was refused by the Supreme Court.

The State Board of Equalization, at the 1900 session, reviewed and equalized the assessments made by the local assessors of the State of Illinois upon property throughout the State, and among other original assessments made by the Board at that session it

assessed the "full value" of the capital stock and franchise of appellee at $19,329,465.00. The "full value" assessment of the tangible property of appellee, made by the local assessors, as equalized by the State Board, amounted to $17,079,465.00. The "full value" assessment, therefore, made by the State Board upon the capital stock and franchise of appellee, was $2,250,000.00. Taxes in Illinois by statute, are paid upon one-fifth of the "full value," and the total taxes due on the assessment of all the property of appellee, both tangible and intangible, originally made by the State of Illinois through its various taxing bodies for the year 1900, amounted to $257,146.74, and this amount was in due time paid by appellee to the proper officials, long before the mandamus case instituted against the members of the State Board of Equalization in the circuit court of Sangamon county came on for hearing.

The 1900 session of the State Board of Equalization adjourned in December, 1900. The mandamus case, after being once continued at the request of the relators, proceeded to trial and judgment in May, 1901, and resulted in a judgment ordering the issuance of the writ of mandamus as prayed. An appeal was taken to the supreme court of the state, which affirmed the judgment of the court below (191 Ill., 528), and a mandate issued directing that the writ of mandamus issue as ordered by the circuit court of Sangamon County.

Prior to this time an election had occurred, and the personnel of the State Board in 1901 was radically different from what it was in 1900, but ten members of the latter Board being members of the Board in 1901. Elections to the Board are quadrennially.

The supreme court in its opinion in the mandamus case (Transcript in 424, p. 538), (adopting substantially the opinion of the Sangamon circuit court), stated that a net assessment against appellee, upwards of nine millions of dollars in amount, should be certified to the county clerk of Cook county, on which the

clerk should extend taxes. The mandamus case was not tried or argued upon the merits, but a defense upon legal propositions only was interposed, which the courts overruled.

During the 1901 session of the State Board of Equalization, and shortly after the rendition of the opinion by the supreme court in the mandamus case, the Board made application to the circuit court of Sangamon county for an extension of time in which to make the re-assessment commanded to be made by the judgments of the Sangamon circuit, and the supreme courts of the State, but the application was denied, and in a manner well calculated to coerce, if not terrify, the members of the State Board, who thereupon, manifestly acting from fear of offending the judge of the Sangamon county circuit court, and without notice to appellee, and without making any independent investigation of the value of the capital stock and franchise of appellee, about to be re-assessed by them, and without equalizing the same with other assessments for the year 1900 upon the property throughout the State, as required by the fundamental law, made another assessment for the year 1900 against appellee on account of its capital stock and franchise in an amount that was satisfactory to, and requested by, the attorney of the Teachers' Federation who had prosecuted the mandamus case in the Illinois courts. This amazing performance well illustrates the coercion, if not terror, under which the re-assessment for 1900 was made by the State Board. The assessment of appellee's capital stock and franchise made by the State Board in 1900 has never been vacated, set aside or annulled. No credit of the 1900 capital stock assessment was permitted nor allowed on the re-assessment thus made; and so popular had become the Teachers' crusade that the county clerk of Cook county, doubtless inspired by the luminous success of the Teachers, tacked on a very substantial penalty for not paying a 1900 tax that was not assessed until November, 1901, under the cir-

cumstances herein outlined. The net re-assessment thus made was $9,217,067.00. At the same 1901 session of the State Board of Equalization, and within a few days, the State Board made an assessment for 1901 upon the capital stock and franchise of appellee according to the formula of the Illinois supreme court as announced in the Teachers' case, but equalized with other property throughout the State. The net assessment for 1901 thus made amounted to $5,782,997.00.

In Illinois, payment of taxes when due may be enforced by distraint and sale. The county collector having demanded payment of the taxes on the 1900 reassessment thus made, appellee filed its bill in the Circuit Court of the United States for the proper district of Illinois, seeking to restrain the collection of the amount demanded, $761,442.23 (which was a lien upon its property) invoking the constitutional guaranties of the Fourteenth Amendment because the reassessment thus made was not due process of law, and was a denial of the equal protection of the laws. Appellee tendered and offered to pay whatever sum, in addition to the 1900 taxes theretofore paid by it, the Circuit Court might determine to be equitable. The circuit judge required, as a condition precedent to granting the injunction prayed for, the payment to the proper tax gatherers of additional taxes over and above the amounts paid on the original 1900 assessment, which in the case of appellee amounted to $279,997.48. This amount was paid by appellee, and the collection of the remainder of the taxes extended upon the 1900 re-assessment was thereupon enjoined.

The questions arising on the record may be succinctly stated as being the jurisdiction of the Circuit Court, and the admitting of incompetent evidence to support the allegations of the bill.

The question of jurisdiction raises the main defense relied on, which is, that the action complained of by appellee, was not State action, but that of State offi-

cials. Appellee's contention is that the action of the State Board was in obedience to a writ issued by the State courts in a proceeding to which appellee was not a party, and the immediate and only effect of which was to take from appellee its property without due process of law, and was a denial of the equal protection of the laws.

While this Court has always declined to give an authoritative definition of the meaning of the constitutional provision that "no person shall be deprived of life, liberty or property without due process of law," preferring that the enunciation of the principle which governs each case should be determined as it arises, as being the better mode of arriving at a sound decision *(Davidson v. New Orleans, 96 U. S., p. 97)*, no stratagem, device, or combination of circumstances, the effect of which is to deny due process of law, or the equal protection of the laws, is beyond the reach of that blessed enactment. There has been no period in the National life, since its enactment, when the beneficent purposes of the Amendment were so vitally necessary to the security and protection of corporate property, and enterprise as now. In the cases at bar no reasonable doubt can exist that a few public utility corporations doing business in the City of Chicago, out of the hundreds of corporations of Illinois, were arbitrarily and wantonly selected, and a confiscatory re-assessment made against the property of those corporations, as the direct and immediate effect of a judgment in the Illinois courts in a legal proceeding to which the persons whose property was about to be taken were not parties. The suggestion that the acts complained of were not State action, but were acts of officers of the State, will not avail, for the basis of the confiscatory re-assessment complained of was final action by the Illinois courts. Judicial action by its Courts is State action within the Fourteenth Amendment.

The salient facts and propositions proven by competent evidence are as follows:

FIRST. An original assessment was made against the complainant by the said Board of Equalization on a basis which was fair and equal with other corporations and with property generally throughout the State, and a tax on that assessment was paid by the complainant, and a receipt obtained.

SECOND. That assessment has never been set aside in any proceeding or action. It has not been mentioned in the pleadings in any case, nor in the judgment in any case.

THIRD. That assessment and payment of taxes, thereunder, was ignored in a legal proceeding to which appellee was not made a party defendant, and in which it did not appear.

FOURTH. In this legal proceeding a new assessment was commanded, without providing that notice should be given to appellee, and no notice was given.

FIFTH. This legal proceeding commanded the State Board of Equalization to value and assess the capital stock including the franchises of appellee, so as to ascertain and determine the "fair cash value" of its capital stock including the franchise, over and above the assessed value of the tangible property, although the "fair cash value" negatives the idea of equalization.

SIXTH. As a result of the legal proceedings, the State Board of Equalization was required to add the bonded indebtedness of appellee to its paid-up capital stock, in order to ascertain the full value of its capital stock, although the bonded indebtedness of other gas companies and similar corporations throughout the State was not considered in the capital stock assessment.

SEVENTH. Property of all classes in Illinois during the year 1900 was systematically and intentionally

undervalued by the State taxing bodies from thirty to forty per cent.

EIGHTH. The State Board of Equalization equalized the assessments of every gas company in the State, except appellee, so that they would be assessed at no higher ratio to their real value than other property in the State of Illinois was assessed. In other words, the property of all corporations throughout the State, except appellee and the few public utility corporations above mentioned, was undervalued by the State Board of Equalization to correspond with the under-valuation of property throughout the State as fixed by the local assessors.

NINTH. No credit was given in the second assessment for the tax already paid on the first assessment.

The brief filed for appellants is divided into four headings :

I. Federal Jurisdiction.

II. Incompetent Evidence.

III. Equitable Jurisdiction.

IV. Error of the Circuit Court in not requiring more taxes as a condition to relief.

The second heading need not be considered, for the reason that the evidence which establishes that which appellee regards as the salient facts in the case has not been questioned by counsel, and it is, of course, unnecessary to argue that this Court will presume that the findings of the Master and the Circuit Judge were based upon and supported by the competent evidence, and in disregard of the incompetent evidence, if there were any such.

So with the fourth heading, appellants' brief, the alleged error of the Circuit Court in not demanding more taxes as a condition to relief need not be considered any further than to state that the Circuit Judge could well have granted the relief, in his discretion, without requiring a single dollar additional tax to be paid. If the re-assessment were valid, then the Circuit Court should not have granted any relief whatever; if it were invalid, then the Court might have granted the relief without requiring the payment of any taxes as a condition, or he might have named any arbitrary sum that he might have chosen. However, instead of either one of these courses, he adopted a fair method of ascertaining the amount of taxes which the corporation might be required to pay under the circumstances, and demanded its payment as a condition of reli

It is idle, therefore, to urge that the Circuit Court, in exercising its discretion as to the amount on which relief would be conditioned, did not settle on an amount on which the counsel are able to calculate.

There remains of appellants' brief, then, only the first and third headings to engage attention. The discussion will be conducted according to the following outline:

SYNOPSIS OF ARGUMENT.

I. Federal Jurisdiction.

1. *Due Process of Law.*

(*a*) A re-assessment was made, although the original assessment had never been adjudged invalid.

(*b*) The complainant was not made a party to the mandamus suit and no notice was given to it.

(*c*) The Board did not use its own judgment in arriving at the full value, but because of judicial coercion used a false standard.

2. *Equal Protection of the Laws.*

(*a*) The Board did not equalize the assessment with assessments throughout the State.

(*b*) The Board did not, acting as an original assess-

ing body, use the same methods of assessment upon appellee as upon other corporations of the same class.

(c) The Board, in making the re-assessment, did not deduct the amount of the original assessment.

3. *The Acts which threatened loss to the Complainant were State Acts.*

(a) The State, *through its highest court*, compelled a re-assessment against appellee, when there was no judgment that the first assessment was a nullity, and when that first assessment had not been attacked in judicial proceedings.

(b) The State, *through its highest court*, compelled a re-assessment against appellee in a proceeding in which appellee was not a party, and in which it had no opportunity to be heard.

(c) The State, *through its highest court*, required a re-assessment against appellee to be made in 1901 for the year 1900, without requiring notice to be given to the Company, and no notice was given.

(d) The State, *through its highest court*, required the State Board to assess the property of appellee at its "fair cash value," which term, under the decisions of Illinois, means "not equalized," although assessments of other corporations of the same class throughout the State were equalized.

(e) The State Board of Equalization, in obedience to the writ of the highest court, made a re-assessment upon the property of appellee, without making deduction for the tax actually paid by appellee upon the first assessment.

(*f*) The State Board of Equalization, following the exact method as laid down in the opinion of the circuit court of Illinois and in the opinion of the Supreme Court of the State of Illinois, and without directly violating the letter of any State enactment, valued the capital stock of this Company by adding its bonded indebtedness to its capital stock, although this method of valuation was not used in the assessment of other corporations of the same class throughout the State.

II. Equitable Jurisdiction.

ARGUMENT.

The Circuit Court of the United States had complete jurisdiction of the grievances set up in the bill of complaint of appellee.

If the collection of the tax had not been enjoined appellee would have been deprived of its property without due process of law; and there would have been a denial to it of the equal protection of the laws, in violation of the Fourteenth Amendment of the United States Constitution. This deprivation and denial, moreover, were acts of the State.

I shall first discuss the "due process of law" clause as bearing on the facts of this case; next, "the equal protection" clause; after which it will be shown that the acts complained of were State acts.

1. *Due Process of Law.*

If the collection of the tax under the re-assessment for the year 1900 be not enjoined, appellee will be deprived of its property without due process of law, for each of the following reasons:

(a) A re-assessment was made, although the original assessment had never been adjudged invalid, nor set aside in any way.

(b) The complainant was not a party to the mandamus suit, and no notice was given to it.

(c) The Board did not use its own judgment in arriving at the full value, but through judicial coercion used a false standard.

(a) The re-assessment was made although the original assessment has never been adjudged invalid.

While the State Board of Equalization was in session at its regular 1900 meeting, and before it had made its valuations of the corporate capital stock, a petition for a writ of mandamus was filed in the Circuit Court of Sangamon County by one Catherine Goggin and one Robert Steele to coerce the Board to value and assess the capital stock of the corporations named in the petition, including appellee.

The petition alleged that the Board and the members thereof had refused to value and assess the capital stock of these companies, and that they intended that year not to value or assess them.

The State Board of Equalization at no time had refused to assess the capital stock of these companies, and after the filing of the petition, and before judgment was rendered, did actually assess the full value of the capital stock and franchise of appellee at Two million two hundred and fifty thousand Dollars ($2,250,000) over and above the value of its tangible property ; and later, December 3rd, 1900, adjourned.

In the summer of 1901, a judgment was entered in the mandamus suit, which is shown on pages 482 and 483 of the transcript. This judgment makes no mention whatever of the assessment which was actually made upon the capital stock of appellee by the State Board, and there was no allegation in the pleadings in the mandamus suit questioning the validity or regularity of this original assessment of 1900. Therefore that assessment, made by the Board in the regular way, at its regular session in 1900, stands to this minute a valid assessment which has not been set aside by any court in any proceeding. The very substantial tax of Thirty-seven thousand six hundred and fifty-one and 50/100 Dollars ($37,651.50) extended upon that assessment was paid by appellee, and a receipt obtained in full for taxes of that year. It is true that the *writ* of mandamus did recite that the original assessment of 1900 was unreasonable, arbitrary and fraudulent ; it is also true that the supreme court of Illinois in its opinion did state that the Board of Equalization adjourned, "after having valued and assessed the capital stock and franchises of seven of said corporations at an amount so low *as is contended by the petitioner** as to amount in law to a fraudulent valuation and assessment, and

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* Italics ours.

therefore to amount to no assessment at all." But these recitals in the writ and in the opinion of the supreme court have absolutely no force when it is borne in mind that there was not a single allegation in the pleadings attacking this first assessment, *and there was not a single word in the judgment (from which the appeal was taken) referring to this original assessment.*

Where a corporation has paid a tax upon a "full value" assessment of $2,250,000, representing intangible property, in addition to the tax paid by it upon its tangible properties, and where there have been no proceedings brought to set this original assessment aside, and where no judgment has been entered finding it was a nullity, it is inconceivable that any court will ever hold that a re-assessment of the same intangible property for the same year may be legally made upon a vague and general theory that the original assessment was too low. While it is true the courts have gone to great lengths in upholding re-assessments of under-valued property, where those re-assessments were made in accordance with state statutes; no court has ever held, and no court will ever hold, that a re-assessment may be made, *ignoring the first assessment*, and making no deductions on account of it, where the first assessment has not been set aside or declared to be too low by the judgment of any reviewing body.

(b) The complainant was not a party to the mandamus suit, and no notice was given to it.

The petition for mandamus brought against the State Board of Equalization did not make appellee a party defendant, and no opportunity was afforded appellee to be heard in that suit. So that even if Catherine Goggin and Robert Steele had so brought their suit or had so amended their pleadings as to attack the validity of the original assessment, and even if there had been a finding in the judgment that the original assessment was too low and therefore invalid, still the re-assessment and collection of the tax extended

thereon, would deprive appellee of its property without due process of law.

Moreover, the judgment and writ of mandamus made no provision whatever for notice to the company that another assessment would be made for the year 1900.

Instead of discussing at length the decisions of this court upon the necessity of notice in tax proceedings, we shall quote from Guthrie's Fourteenth Amendment, in that portion of his work devoted to the essential elements of "due process of law" in taxation. He says (p. 96):

> "If the tax be assessed according to value, notice to the owner at some stage of the proceeding is necessary because, in estimating the value, the taxing officers act judicially."

And again:

> "The result of many cases has been the rule declared by the Supreme Court that a statute or proceeding imposing a tax or assessment upon property according to its value will constitute due process of law if the owner had an opportunity to question the validity or the amount of the tax or assessment either before its amount is determined or in subsequent proceedings for its collection. The notice need not be personal, but may be by publication."

This summary of the law with reference to notice is fully supported by Hagar vs. Reclamation District, 111 U. S., 701, and numerous other decisions of this Court, cited by Guthrie on page 96 of the work quoted from.

The basis of the present case, is a mandamus proceeding in a State Court having for its object the coercion of a State Board to the imposition of a second tax for the same year upon appellee. In this proceeding, which required a second tax, and which speci-

fied in detail the manner of its computation, appellee was not made a party defendant and could not become a party plaintiff or defendant of its own motion. Although there is a provision in the Statutes of Illinois permitting a *petitioner* in a mandamus suit to make third parties defendants after the pleadings have been filed, yet no right is offered to a third party to come in on his own motion and be made a party defendant.

High on Extraordinary Legal Remedies, 3d Ed. (Par. 458) states the rule as follows:

> "The right of third persons, not parties to the action, to interplead in proceedings in mandamus rests wholly on the statute, no such right existing in common law."
>
> And see Winstanley v. People, 92 Ill., 402.

It will not be denied that, when the State Board of Equalization met in its regular session in 1901, a year after the original assessment had been made, it would have been *possible* to have gone before that State Board and objected to the second assessment; but the mere *possibility* of such adventitious appearance before the State Board does not meet the requirement of notice, because in the first place, no notice was given and, in the second place, if it had been given, it was too late for a hearing to be of any avail. By that time, the State Board had been served with a writ of mandamus, compelling it to make this second assessment and compelling it to make it according to a method not applied in the assessment of corporations throughout the State.

The enthusiastic support of this kind of "due process of law" given to the Teachers' crusade by certain elements of the daily press made known to all men what was being done, but appellee, and the other corporations selected in the manner aforesaid, who were being deprived of their property and assets, were helpless, and the notice required by an enlightened system of judicature is not met by newspaper recitals, how-

ever widespread or frenzied the statements or comments therein contained may be.

In order that this reassessment for 1900 might not have been violative of the Fourteenth Amendment of the Constitution, some notice, some opportunity for hearing, some consideration should have been given to the person injured by the proceeding which compelled that reassessment to be made. There can be no question, of course, that the requirement of notice and opportunity for hearing is just as essential in a reassessment as upon an original assessment.

As is said by Mr. Gray in his Limitations of Taxing Power and Public Indebtedness (Sec. 1295):

> "Whenever a reassessment of any kind is made, whether to validate a void assessment or to reach omitted property or to secure a revaluation of property undervalued or overvalued, there is the same necessity for notice and hearing as in the case of an original assessment."

(c) The Board did not use its own judgment upon arriving at the full value, but through judicial coercion used a false standard.

Upon this point I desire, first, to quote from the opinion of Judge GROSSCUP:

> "The sum of it all is, that by whatsoever causes brought about, the reassessments complained of did not in my opinion, express the real judgment of the State Board as an independent tribunal, and were therefore in effect, fictitious judgments, for the impeachment of which somewhere the law holds out opportunity to the parties injured; and the direct evidence of the members of the State Board called as witnesses, sustains this view."

And again:

> "A substantial step in the taxing process as fixed by the law of Illinois; a step essential to

the equal distribution of the burdens of taxation; is the decision and judgment of the State Board of Equalization. The Board's place in the taxing system is that of a *quasi* judicial body. Its judgment affects, as keenly as that of any court, the property interests collectively of the several districts of the State, and directly and individually, of the persons and corporations owning franchises. No court can by its judgment grasp more completely what would otherwise remain the property of the individual. In no other tribunal can there be found apter illustration of the power of the state to compel the individual to deliver up his property under the stress of law. It needs no argument to show that power, such as this, is only exercised rightly when exercised judicially.

The prime quality of every judgment, without which it is no judgment, is that it is the final thought of the judge on the subject submitted, unaffected by extrinsic influences. This implies freedom of mind—not merely theoretically but practically—the freedom of mind that does not fear, that has no wish of its own, that sees nothing not seen through the lenses of the law. Judgments honestly made up in such an atmosphere, though subject to review for error, are due process of law; judgments affected by fraud or fear, however solemnly entered, are as nothing when weighed by the constitutineal guaranties thrown around liberty and property."

The writ of mandamus required that the Board, in making its valuations of the capital stock should "ascertain as to each said corporation as the same was on the first day of April, 1900, the market value, or, if no market value, then the fair cash value of its shares of stock", etc.

The requirement that market value on the first of April should be considered in fixing the assessment was the imposition of an absolutely false standard.

The market quotations of the shares of stock of this complainant fluctuated in the year 1900 from 81-5/8 low to 111-1/2 high. This high point was reached on the second of April (April first falling on Sunday). The market value of stock is of itself so unreliable and unsatisfactory as to give no real basis for valuation for stock purposes; but, when the court went further and required them to consider that the market value *on April first*, at which time the stock was 15 points higher than the mean market value for the year, he changed the *unreliable* and *unsatisfactory* standard to an absolute *false* one.

On this question I can do no better than to refer the Court to *Railroad and Telephone Cos. v. Board of Equalizers, 85 Fed., 302*, at page 311, *et seq.*, and to the case of Central Transportation Co. v. Pullman Co., 139 U. S., 29.

The real judgment of the State Board was not exercised. The individual members confessed to this on the witness stand. Instead of their judgment was substituted the judgment of the state court, and it cannot be said that due and orderly processes of law permit the coercive substitution of a State circuit judge or a State supreme court in place of the judgment of a taxing body, whose duties of valuation are *quasi* judicial.

2. *Equal Protection of the Laws.*

In addition to the defects and irregularities which would result in depriving appellee of its property without due process of law, there were other features which would constitute a direct denial to the complainant of the equal protection of the law. As denying the equal protection of the law, we look to the following facts :—

(a) The Board did not equalize the assessment with assessments throughout the State.

(b) The Board did not, acting as an original assessing body, use the same methods of assessment of appellee's capital stock and franchise, as was used in mak-

ing the assessment on capital stock and franchises of other corporations of the same class for the same year.

(c) The Board, in making the re-assessment, did not deduct the amount of the original assessment.

(a) The Board did not equalize the assessment with the assessments throughout the State.

The record discloses that property throughout the State of Illinois in the year 1900 was systematically and intentionally under-valued by the local assessors; that is to say, although required to value property at its *full worth*, and then take one-fifth of that amount as the assessed value, the local assessors valued the property at not more than seventy per cent. of its full value, and took one-fifth of *seventy per cent.* as the assessed value. The Board of Equalization, with full knowledge that property throughout the State was so under-valued, were compelled by the courts of Illinois to assess the capital stock of appellee at its full value, and without making any reduction on account of the general, systematic and intentional under-valuation of other classes of property throughout the State. It is in this failure to equalize that is found the denial to appellee of the equal protection of the laws. I shall now refer to the evidence, in order to show the exact nature of this under-valuation.

Under the laws of Illinois, the capital stock of corporations of this class is assessed by the State Board of Equalization. By capital stock is meant the entire property and assets of every kind belonging to the company. To avoid double taxation, there is deducted from the capital stock assessment, as found by this Board, the assessed valuation of the tangible property as made by the local assessors in the various counties. At the session of 1900, the State Board assessed the capital stock of three hundred and thirty-four companies and associations, including appellee. The aggregate paid-up capital stock of these three hundred and thirty-four corporations was $236,067,920. The State Board assessed the " full value " of the capital stock and franchises of these three hundred and thirty-four

corporations at the sum of $129,489,040, and the assessed value (one-fifth thereof) was $25,897,808. The assessed value of the tangible property of these three hundred and thirty-four corporations, as found by the local assessors, and as equalized by the State Board of Equalization, was $21,089,178, and this last sum being subtracted from the assessed value of the capital stock, left a net assessment of capital stock and franchises of $4,808,630.

Therefore, the " full value " of the capital stock and franchises of the three hundred and thirty-four corporations and associations for the year 1906, as ascertained and determined by the State Board of Equalization, was only fifty-five per cent. of the amount of the capital stock actually paid up, as represented to the State Board by the corporations themselves.

The " full value " of the capital stock of appellee, however, at the first assessment made in 1900 was fixed at *sixty-seven per cent.* of its capital stock paid up, so that the original assessment of 1900 against appellee, which the supreme court of Illinois said (extra-judicially) was too low, was more than twelve points higher proportionately than the average capital stock assessment of corporations of the same class throughout Illinois.

At this same session of the year 1900, the State Board of Equalization, in addition to the three hundred and thirty-four corporations above mentioned, passed upon one hundred and twelve railroad companies, and determined that the total assessed value of the tangible property (which in the case of railroad companies is to be assessed by the State Board of Equalization) was the sum of $77,878,672. They further determined that this assessment on the tangible property was such an amount as would, if subtracted from the capital stock assessment, leave no balance. In other words, the State Board of Equalization for the year 1900 placed no capital stock assessment upon any one of the one hundred and twelve railroad companies assessed by them.

In the year 1900 there were returned by the local assessors of the State 1,209,446 horses, valued at $54,823,040, or an average of $45.30 per animal. In the same year there were sold at the Union Stock Yards in Chicago, a large general market for the sale of live stock of all descriptions, 99,010 horses for $11,484,160, or an average of $116 per horse. This shows that the average value put upon the horses by the local assessors throughout the State was only thirty-nine per cent. of the average value brought by the horses in the open market in the city of Chicago during the same year.

In 1900 there were returned by the local assessors 2,438,275 head of cattle, valued at $60,024,285, or an average of $24.60 per head. During the same year 2,729,016 head of cattle were sold at the Union Stock yards for the sum of $136,452,300 in cash, an average of $50 per head. This demonstrates that the local assessors valued the cattle at only forty-nine per cent. of their fair cash value.

In the same year there were returned by the local assessors 2,690,367 hogs, assessed at the sum of $14,425,615, at an average of $5.35 each. At the Union Stock Yards the same year 8,190,064 hogs were sold for $96,092,408, or an average of $11.84, showing that the full value of the hogs returned by the local assessors throughout the State was but forty-four per cent. of the fair cash value of said hogs, as shown by the sales thereof made in the open market for cash in the same year.

The reports of the State Board of Agriculture furthermore show that while 2,829,900 hogs were returned by the local assessors, and assessed at an average full value of $5.35 per head, there were sold in the open market eighty-three per cent. of the entire number so returned for the sum of $23,066,408, or an average full value of $9.78 per animal. This demonstrates *in another way* that hogs in the State were systematically and intentionally under-valued by the local assessors.

This same report of the State Board of Agriculture shows that while 2,900,598 cattle were returned by the local assessors at an average full value of $24.66 per head, there were 462,197 cattle actually sold in the market that year for an average of $47.79 per animal; showing in still another way the systematic and intentional under-valuation by the local assessors.

In the State of Illinois, during the year 1900, there were forty-eight companies, not including this complaint, engaged in furnishing and supplying gas to consumers in cities, villages and towns. The aggregate amount of paid-up capital stock by these gas companies was $15,922,280. Their total bonded indebtedness was $4,782,235. The "full value" of the capital stock and franchises, as fixed by the Board, was $3,948,610. That this was a systematic and deliberate under-valuation, is shown by the fact that the "full value" of the capital stock and franchise, as assessed by them, did not exceed sixty per cent. of the amount paid in as returned by the corporations. The total valuation of all the tangible property owned by appellee, on the first day of April, 1900, in Cook County, and there locally assessed, as determined by the Board of Review and equalized by the State Board, was fixed for all purposes of taxation at the sum of $17,079,465, and the assessed value (or one-fifth thereof) was $3,415,893.

The State Board, to obtain the proper capital stock assessment, subtracted the equalized assessed valuation of the tangible property from its own valuation of the capital stock, which left a balance of $2,250,000 full value, or $450,000 assessed value.

After the mandamus suit had been decided in the Supreme Court, and after the State Board had requested an extension of time, in order to make the assessment, and had been frightened into an immediate and hasty action, they did, on the 20th of November, 1901, make an assessment against the capital stock and franchises of appellee in the manner required by the opinions of the circuit and supreme courts.

The tax on this assessment was extended by the county clerk of Cook county and placed upon the tax warrant and amounted to $725,183.17. In addition to the tax as thus extended upon the second assessment, the county clerk of Cook county, *without any valid warrant, added, by way of alleged penalty, the sum of $36,259.06*, making the total amount claimed to be due from appellee, on account of this second assessment, the sum of $761,442.23.

In arriving at the assessment of $9,217,067, the State Board of Equalization assessed the full value of the capital stock of appellee at par in the sum of $28,668,800. They then added the full amount of the outstanding bonded indebtedness at par, amounting to the sum of $34,496,000. The sum of these $63,164,800 was taken as the "full value" of appellee's property. The assessed value (one-fifth thereof) amounted to $12,632,960. From this they subtracted the equalized value of the tangible property, as assessed by the local assessors, viz., $3,415,893, leaving, as above shown, a net assessment of $9,217,067.

The State Board of Equalization did not, for the year 1900, follow this same method of arriving at the assessment of the capital stock in the case of any other gas company in the State of Illinois, nor did it adopt such method as to any steam railroad company, nor of any other corporation whatsoever, except the corporations mentioned in the mandamus suit. In other words, appellee, and the other Chicago public utility corporations, were the only corporations in the State of Illinois, whose bonded indebtedness was added to the paid up capital in order to determine the value of the capital stock, and the assessments thus made were not equalized by the State Board of Equalization, with other property throughout the State.

The original assessment for the year 1900, made by the State Board of Equalization, against the capital stock and franchises of appellee, was upon the ratio of valuation fully as high as the assessment against the capital stock of any other gas company doing business

in Illinois and higher than the ratio value applied by the State Board of Equalization to the capital stock of any steam railroad in the State of Illinois. The tax upon the original assessment was paid by appellee, and has not been returned to appellee and if the tax which was extended upon the re-assessment for 1900 were to be collected, appellee would be compelled to pay taxes twice on account of two assessments against its capital stock and franchises for the same year.

The Board of Equalization having assessed the capital stock of this Company at its full value (and more), should have been permitted by the State courts to have equalized that assessment by reducing it thirty per cent. This it failed to do, and the reassessment was returned at the absolute full value. Furthermore, after having made its assessments on other corporations throughout the State as an original assessor, it then acted as an equalizer and reduced their assessments thirty to forty per cent., but did not make this reduction in the assessment of appellee; so that the Board of Equalization, acting as an equalizer, not only failed to equalize this reassessment with assessments of other property made by local assessors throughout the State, but also failed to equalize the reassessment with its own original assessments of other corporations of the same class.

In taking up the question whether a valuation of property at its full worth in accordance with the State law is invalid where there is a systematic, habitual and intentional under-valuation of other property of the same class throughout the State, I desire first to call the attention of the Court to two Illinois cases, *Board of Supervisors v. The C., B. & Q. R. R.* and *Chicago, and Northwestern R. R. v. Boone County*, 44 Ill., the former at page 229, and the latter at page 240. Both opinions are by Mr. Justice BREESE, and both these cases involve the situation where in spite of a general under-valuation of property by the assessors, the property of the complainant railroad companies was assessed at its full value.

In the former case the Court said (p. 239):

"The rule adopted by the assessors in this State has grown into a custom, and has been tacitly sanctioned by every department of the government for a long course of years, and it is now too late to challenge it. Even so late as the last special session of the legislature, that body, by clear implication, acknowledged the custom and yielded to its influence, by the provisions of the act to tax the shares in national banks. They therein impliedly declare that such shares are to be taxed the same as other property. A share of bank stock, under that bill, is not required to pay more State or local taxes than a piece of land, or a house, of equal value; and the plain inference is, if such property be assessed on only one-third of its actual value, bank stock shall be assessed on the same per cent of its actual value. Would not the sense of justice of every man in this community be outraged by allowing this or any other depreciation to one class of people, and demanding of another a higher tax on a similar article of the same actual value? The proposition cannot commend itself to the favor of any just man, and can receive no countenance in a court of justice.

It is an admitted fact on both sides to this controversy, that the property of no one owner in the county of Bureau has been taxed on its real value, and that the per cent. added by the board of supervisors to the valuation of the property of appellees imposes on them a greater proportionate burden than the law requires them to bear. We are of this opinion, and therefore consider that the action of the board unfounded in justice, and in direct opposition to the Constitution. The great and attractive feature of uniformity has been disregarded by the board, and appellees victimized. It may be very desirable, that the greatest share of the public burdens shall be borne by these

corporations, but until there be a radical change in our fundamental law it cannot be done. They stand on the platform of equality before the law, and no greater burden for the support of government can be imposed upon them than can be placed on the individual taxpayer."

And in the latter case, in language equally vigorous and greatly refreshing in these days when, to avoid executive or public condemnation, every effort is made to place unequal burdens upon corporate activity, the Court said (p. 242):

"It cannot be, that one portion of the tax payers in a county, owning taxable property, shall be required to pay more taxes in proportion to its value, no matter how that may be ascertained, than another portion in the same county. If the assessors, regardless of the strict injunction of the law, shall place a value upon property far below its real cash value, and such a practice goes on unchallenged, and is recognized by the authorities having special charge of the revenue of the State, that misconduct must also contain within itself the great and cardinal principle of uniformity. No warrant is given, if the law is not strictly observed in the case of individuals, and their property is not assessed at its actual value, that the property of a corporation situate in the same county, shall be assessed at greater proportional value than that of individuals, even though the enhanced assessment is not on the actual cash value of the property of such corporation. The same rule which is applied to individuals, justice and the Constitution demand shall be applied to corporations. To demand of appellants that they should schedule their property at its cash value, while individuals may schedule their property at one-third, or less, of such value, would be to demand

of the former three times the amount of taxes demanded of the latter.

As we said in the Bureau county case, such a proposition is so monstrous as to be indefensible by fair argument. Such discrimination is condemned, not only by the constitution, but by the indignant, yet no less just, judgment of an honest people."

I do not desire to give the impression that decisions throughout the United States are harmonious upon this question. An investigation of the various State holdings will disclose that, where statutes expressly require all property to be taxed at its full cash value, there are some courts which hold that the remedy of a tax payer whose property has been assessed at its full value, in spite of a general and systematic undervaluation of other property, is not to decrease the assessment of the complaining tax payer, but to increase the assessments of all the others. There are holdings to that effect in Kentucky, Massachusetts, Ohio and New Jersey.

On the other hand, the decided weight of authority of the State courts is that the tax payer whose property is assessed at its full value, while that of others is placed below its full value, is entitled to a proportionate reduction of his assessment. Decisions to this effect are found in Arkansas, Nebraska, New York, Pennsylvania, Washington, Illinois, Kansas, Connecticut and New Hampshire.

The Federal Courts have uniformly held in accordance with this latter view.

It cannot be doubted that superficially a court is confronted with a dilemma when assessments made unequal by undervaluation, are presented. Shall they adhere to the fundamental thought of taxation, viz.: equality, or shall they because of the statutory requirements that all property shall be assessed at its cash value disregard that spirit, and satisfy themselves by saying that the complaining tax payer, who has been

assessed at the statutory full value, has no remedy except to compel the assessors throughout the State, by some unheard-of proceedings, to assess property at its full value.

The Supreme Court of Connecticut, in approaching this dilemma, did not hesitate to grasp the horn of common sense. They say in *Randall v. Bridgeport*, 63 Conn. 321, as follows:

> "Practically the only way to redress the wrong is to reduce the assessment and that makes the court seem to disregard the statute, while, if the wrong is not redressed, there is a denial of justice and the court practically ignores the statute giving an aggrieved party an appeal and practically ignores the statute which provides that said court shall have power to grant such relief as shall to justice and equity appertain. Thus we are in a dilemma * * *. Under the circumstances, we do not hesitate to choose the former and to redress the wrong."

As above stated, the Federal Courts have likewise been able to comprehend that it makes little difference whether property is assessed at its full value or not, so long as there is equality. These courts have recognized that to lower the percentage of assessment has no other effect than to raise the tax rate, leaving the result the same; that is to say it is immaterial to the individual tax payer whether the tax rate is 1% on a full valuation, or 2% on a half valuation or 4% on a 25% valuation.

In County of Santa Clara v. Southern Pacific, 18 Fed. 385, Mr. Justice FIELD said, at p. 394:

> "The basis of all *ad valorem* taxation is necessarily the assessment of the property; that is, the estimate of its value. Whatever affects the value necessarily increases or diminishes the tax proportionately. If, therefore, any element which is

> taken into consideration in the valuation of the property of one party, be omitted in the valuation of the property of another, a discrimination is made against the one, and in favor of the other, which destroys the uniformity so essential to all just and equal taxation."

In *C. B. & Q. R. R. Co. v. Board of Commissioners*, 67 Fed. 411, the Circuit Court of Appeals of the Eighth Circuit, following the decisions of the supreme court of Kansas, held that the railway company was entitled to an injunction to restrain the collection of a tax where the railroad property had been assessed at its full value and other property in the county at about one-third of its value.

The fullest discussion of this question in the federal courts is found in the opinion of Judge TAFT in *Taylor v. Louisville & Nashville*, 88 Fed. 350. Beginning on page 364 and running to the end of the case, the authorities on this question are thoroughly considered and a conclusion reached that the spirit of equality should control the decision and not the letter of a law which requires full valuation. He says, at p. 365:

> "Therefore, to enjoin the enforcement of the prescribed method of assessment as to one species of property, when there is a departure from it as to all others, if the injunction secures uniformity as to all, is not so great a violation of the method really prescribed as that involved in a continuance of the existing conditions, and the denial of relief to the injured taxpayer. The court is placed in a dilemma, from which it can only escape by taking that path which, while it involves a nominal departure from the letter of the law, does injury to no one, and secures that uniformity of tax burden which was the sole end of the constitution. To hold otherwise is to make the restrictions of the constitution instruments for defeating the very purpose they were intended to subserve. It is to

stick in the bark, and to be blind to the substance of things. It is to sacrifice justice to its incident. The same dilemma has been presented to other courts. They have not always taken the same horn."

And again, in commenting upon the contra cases, he says, at p. 369:

"As has already been said, there are cases in which the other horn of the dilemma has been taken, the injustice to the complaining class of taxpayers has been allowed to continue, and the violation of constitutional or statutory uniformity and equality has gone on unhindered, in order that the letter of the law may be preserved while its spirit is flagrantly broken."

In *Louisville Trust Company v. Stone*, 107 Fed., 305, it was said by Mr. Justice DAY:

"It may be conceded that, if the allegations of the bill are made out, there exists in respect to the property of the complainant and others similarly situated a systematic, intentional and illegal undervaluation of property by the taxing officers of the State which necessarily effects injurious discrimination against the property of which the plaintiff is the owner and a bill in equity will lie to restrain such illegal discrimination and in such cases federal jurisdiction will arise because of the equal protection of the laws guaranteed by the Fourteenth Amendment."

And in the case of *Cummings v. The Bank*, 101, U. S. 153, which we have heretofore cited, it is said, through Mr. Justice MILLER:

"When a rule or system of valuation is adopted, by those whose duty it is to make the assessment, which is designed to operate unequally, and to

> violate a fundamental principle of the constitution, and when the rule is applied, not solely to one individual, but to a large class of individuals or corporations, then equity may properly interfere to restrain the operation of this unconstitutional exercise of power."

And again, after commenting on the general custom of undervaluing real estate, it is said:

> "But, whatever may be its cause, when it is recognized as the source of manifest injustice to a large class of property, around which the constitution of the state has thrown the protection of uniformity of taxation and equality of burden, the rule must be held void, and the injustice produced under it must be remedied, so far as the judicial power can give remedy."

(*b*) The Board did not, acting as an original assessing body, use the same methods of assessment on appellee as upon other corporations of the same class.

The second feature of this new assessment, which constitutes a denial of the equal protection of the laws, is the fact that in assessing the corporations of the State generally for the year 1900, the bonded indebtedness was not added to the paid up stock in order to ascertain the total full value of the capital stock. In other words, without any basis of classification whatever, acting under judicial compulsion, the Board used one method in arriving at the value of the property of appellee, and the other public utility corporations similarly situated, and a radically different method, producing radically different results, on all the other corporations throughout the State.

No question is made of the power of the State to make reasonable classification, nor is it contended that the Fourteenth Amendment requires the State tax officials to adopt an iron-bound method of valuation, which will result in assessments of mathematical equal-

ity, but it is insisted that, until the courts are willing to uphold a progressive tax—until they are willing to say that the large corporation must pay more in proportion than the small—they can never sanction a method of valuation by which in the case of one corporation the tax officers add the debt to the paid-up capital stock to ascertain the full value of the capital stock and franchises and in the case of other smaller corporations *of the same class* they omit to add it; nor can it be said in defense of these methods of inequality, which have been practiced in the present case, that, if these other smaller corporations throughout the State had been included in the petition for mandamus, the State Board would have been coerced to apply the same method to them as has been applied to this complainant.

The ultimate fact is that the State courts did require the application of that method to appellee but did not require its application to other corporations throughout the State. This fact, of itself, is sufficient to condemn the reassessment and, if there had been due process of law and equality in every other regard, we should be confident that this conspicuous feature of gross inequality would deprive the assessment of the sanction of this court in this case.

(c) The Board, in making the re-assessment, did not deduct the amount of the original assessment.

To make one assessment upon certain property for one year, which is paid in full by the taxpayer, and then, while that assessment is still in force as a valid assessment, unattacked in any judicial tribunal, to make another and new valuation without giving any notice or opportunity for a hearing, and without even making a deduction or a credit on account of the former tax so paid, is so glaringly a denial of equality that it would seem to be unnecessary to further discuss its invalidity, or to cite authorities which condemn it.

A mere statement of the case shows that the inequality suffered is the very inequality that robs an

exaction of the name "tax" and brands it as "confiscation."

3. *The Acts which threatened loss to appellee were distinctly State Acts.*

It is suggested by the counsel for the city of Chicago that inasmuch as no complaint is made of the constitution and laws of the State of Illinois, and because the only complaint is that the State Board has violated the constitution and the laws of the State of Illinois, therefore the wrong, not the wrong of the State, but of its officers, could not be redressed in federal tribunals.

As a matter of fact, the wrong committed by the State Board of Equalization was a wrong compelled by the highest court of the State of Illinois. We do not contend before this court that the constitution of the State of Illinois has been violated. Whether it has been violated or not is a matter of no importance to this Court. What I do contend is that the acts done under the State authority were violative of the Fourteenth Amendment, and were directly acts of the State. I insist that the following acts are acts of the State.

(a) The State, through its highest court, compelled a re-assessment against this Company, when there was no judgment that the first assessment was a nullity, and when that first assessment had not been attacked in judicial proceedings.

(b) The State, through its highest court, compelled a re-assessment against this Company in a proceeding in which this Company was not a party, and in which it had no opportunity to be heard.

(c) The State, through its highest court, required a re-assessment against this Company to be made in 1901 for the year 1900, without requiring notice to be given to the Company, and no notice was given.

(d) The State, through its highest court, required the State Board to assess the property of this Company at its "fair cash value," which term, under the decisions of Illinois, means "not equalized," although assessments

of other corporations throughout the State of the same class were equalized.

(e) The State Board of Equalization, in obedience to the writ of the highest court, made a re-assessment upon the property of this Company, without making deduction for the tax actually paid by the Company upon the first assessment.

(f) The State Board of Equalization, following the exact method as laid down in the opinion of the Circuit Court of Illinois and in the opinion of the Supreme Court of the State of Illinois, and without directly violating the letter of any State enactment, valued the capital stock of this Company by adding its bonded indebtedness to its capital stock, although this method of valuation was not used on other corporations of the same class throughout the State.

I shall discuss these six points in the above order.

(a) The State, through its courts, compelled a re-assessment against this Company, when there was no judgment that the first assessment was a nullity and when that first assessment had not been attacked in judicial proceedings.

Counsel for appellants make no reference to this feature in their discussion of the question of State action. The situation is precisely this: The highest court of a State in effect says to the highest taxing body of a State "You must make a new assessment on the capital stock of The Peoples Gas Light and Coke Company, although one assessment has been made, and although the tax has been paid upon that assessment, and although that assessment has not been attacked by anybody in any court in Christendom."

The assessment made by the State Board of Equalization in 1900 *was final.* There is no board or body in the State to exercise a revisory power over their judgment.

Missouri vs. Dockery, 191 U. S. 165.

The cases cited by appellants to the effect that there must be State action, are beside the point. Of course

there must be State action. It is conceded that the proceedings of *subordinate* officials or individuals in violation of State laws, and without any sort of State warrant or authority, although they may result in inequality of burden, or deprivation of property without due process of law, are not within the inhibition of the Fourteenth Amendment.

The Federal inhibition is against State action. Without entering into a metaphysical discussion as to what constitutes "The State," we conceive no difficulty in convincing this court that the judiciary is as much "The State" as the legislature, and coercion by the highest court of the State of Illinois in the present case had precisely the same effect as if a law had been passed in the spring of 1901 by the state legislature providing as follows:

> "The State Board of Equalization at its 1901 meeting shall make a second assessment upon the capital stock and franchise of The Peoples Gas Light and Coke Company for the year 1900, and shall not take into consideration the fact that the tax upon the first assessment has been paid, and that that first assessment has not been attacked in any judicial proceeding. Notice shall not be given to The Peoples Gas Light and Coke Company."

(*b*) The State, through its highest court, compelled a re-assessment against appellee in a proceeding in which appellee was not a party, and in which it had no opportunity to be heard.

The supreme court of the State of Illinois, in affirming the judgment of the circuit court, and in compelling this re-assessment, knew that appellee was not a party defendant, and that it had had no hearing, and they must be presumed to have known what has been above shown, that in mandamus proceedings in the State of Illinois a third party has no right to intervene and become a party litigant, unless made so by the petitioner. Yet, with knowledge of all this, that court compelled

the re-assessment which, if enforced, would deprive appellee of its property without due process of law.

(c) The State, through its highest court, required a reassessment against this Company to be made in 1901 for the year 1900 without requiring notice to be given to appellee, and no notice was given.

In carrying out the mandate of the State court, the State Board of Equalization met at its regular session in 1901. It is conceded that notice of the regular sessions of the State Board of Equalization was not required. They are public sessions, and opportunity is given to the corporations to be present, and to be heard; but this new assessment was not a part of the regular business of the Board for 1901. The only notice that a corporation can be presumed to have with reference to the meeting of 1901, is that at that meeting the Board will make assessments for 1901; and it is utterly insufficient to say that because the sessions of the Board are public, therefore this company had notice that the Board of 1901 would go back and make a new assessment for the year 1900.

(d) The State, through its highest court, required the State Board to assess the property of this Company at its "fair cash value," which term, under the decisions of Illinois, means "not equalized," although assessments of other corporations throughout the State of the same class were equalized.

As is said by the Supreme Court of Illinois in Law v. The People, 87 Ill., 385:

> "Under the circumstances had the State Board set down the property of the corporation at its *fair cash value* as ascertained for the purpose of taxation, then such property would have been subjected to an increased taxation in proportion to property of other owners, which the Constitution positively inhibits. Observing the Constitutional injunction, rather than literal compliance with the statute, the State Board *equalized* the valuations of

> that class of property at the same ratio adopted by local officers in fixing valuations of other property in their several localities. Any other rule would have been most unjust, as well as in contravention of the Constitution."

From this opinion it is clear that the Supreme Court of Illinois has not considered that "fair cash value" and "equalized value" were one and the same. Therefore, when the supreme court affirmed the judgment of the Circuit Court, which required the assessment of the property of appellee, at its fair cash value, it, by undoubted implication, prohibited the State Board of Equalization from equalizing the property of appellee as it had equalized other property throughout the State. In addition, however, to the use of these words, "fair cash value", the judiciary used other language which absolutely prohibited the State Board from equalizing the tax.

In his opinion, Judge THOMPSON of the State circuit court said (Transcript in No. 424, p. 121):

> "The Peoples Gas Light and Coke Company filed with the State Auditor a statement which was sworn to by L. A. Wiley, Secretary of said Company, on the 17th day of November, 1900, the day following the commencement of this suit. This statement was laid before the Board by the Auditor; The Board was then in session; the statement showed the amount of capital stock paid up to be $28,668,800.00; the amount of indebtedness to be $34,000,000.00, and the total value of the tangible property to be $15,526,785. This statement shows the aggregate amount of the full value of the capital stock and the indebtedness (bonds, etc.) to be $62,668,800.00. Under the revnue law then in force one-fifth of this amount, or $12,533,760.00 should have been taken as representing the assessed value, and from this assessed value should have been deducted the assessed

value of tangible property, which, under the law, should have been one-fifth of the full value of the tangible property, or, in other words, $3,105,567.00, and there would have remained after making such deduction *$9,428,403.00 which, under the law, should have been certified to the County Clerk of Cook County, on which said Clerk should have extended the taxes.*"

This opinion was copied almost verbatim by the supreme Court, 191 Ill., at p. 338.

The re-assessment as actually made by the State Board of Equalization was $9,217,067.00, showing that the State Board followed this utterance of the state court almost to the letter. There nowhere appears in this opinion a requirement that the State Board of Equalization should equalize the assessment found by it with other property, and it is of course to be expected that the State Board would not, under such circumstances, equalize.

Some effort has been made to make it appear that the failure of the State Board to equalize was the result of their own wrong, and not the result of any coercion by the State Court. In view of the use of the words "fair cash valuation"; in view of the opinion of the supreme court and the opinion of the circuit court here quoted, which goes so far as to state the amount which should have been certified to the county clerk, but is silent as to equalization; and in view of the fact that the members of the State Board themselves testified under oath that they felt bound by the writ of mandamus not to equalize the property, this effort would seem to be poorly supported.

At this same session in 1901 and within a few days of the time this coerced assessment was made, the State Board made its regular 1901 assessment on the capital stock and franchise of appellee and although the property was of practically the same value, this regular 1901 assessment was equalized and was so much

less as to conclusively show that the 1900 re-assessment was the result—not of their own judgment but of the inexorable mandate of an impatient court.

The re-assessment for the year 1900 was....$9,217,067
The assessment for the year 1901, as equalized, was.....$5,782,997

(e) The State Board of Equalization, in obedience to the writ of the State Court, made a re-assessment upon the property of appellee without making deduction for the tax actually paid by the Company upon the first assessment.

As above stated there could hardly be a more conspicuous instance of double taxation than this. The State Board, acting through fear of an intolerant Court, made a re-assessment without giving any credit for the first assessment, upon which the tax was paid. The circuit court itself by implication forbade such deduction to be made, and the supreme court affirmed the judgment.

(f) The State Board of Equalization, following the exact method as laid down in the opinion of the circuit court of Illinois, in the opinion of the supreme court of the State of Illinois, and in the judgment itself, and without directly violating the letter of any law of the State of Illinois, valued the capital stock of appellee by adding its bonded indebtedness, although this method of valuation was not used on other corporations throughout the State.

In the opinion of the circuit court, in the opinion of the supreme court, and in the judgment entered in the case, the State Board of Equalization were directed to add the total amount of indebtedness to the paid-up stock in order to ascertain the value of the capital stock. This direction was complied with by the State Board. For the year 1900 no other corporations in the State of Illinois with the exceptions already stated were assessed in this manner. The bonded indebtedness of corporations throughout the State was not

added to their paid-up stock to ascertain the amount of their capital stock. In this situation will counsel say that the wrong resulting was merely the wrong of subordinate taxing officials, and not the wrong of the State? We have the highest judicial tribunal of the State of Illinois, compelling the highest taxing body of the State of Illinois, to use a method of valuation which results, peculiarly in the case of appellee (because singled out and specific attention directed to it by the courts), in a great increase in the assessed value of its capital stock, although for that year the same method was not used on other corporations throughout the State. This must be conceded to be State action, and the citation of authority is probably unnecessary in view of appellant's concession, where it is said (p. 49, appellant's brief):

> "Where a State law, which is just and fair upon its face, is so interpreted by the highest tribunal of the State as to deprive a person of his property without due process of law, the deprivation of the property is imputed to the State for the law."

The argument and authorities of the appellants upon this question as it is contained in their brief filed in this court in case No. 424 on pages 46 to 73, inclusive, may be considered.

At the very inception, appellants make the mistake of basing their argument upon a situation which does not exist. As a heading to their argument, they say:

> "Where the constitution and the laws of a State are just and fair and the *sole grievance* of which the party complains is that the officers of the State charged with executing those laws have deprived that party of property contrary to the constitution and laws of the State and in violation of the terms thereof, no federal question is presented, for, under the above circumstances, it will

be presumed that the State courts will give relief against the illegal and unauthorized acts of the officers of the State."

Fortunately we are not in a position of being compelled to deny this statement of the law. It may be a fair statement of what the Supreme Court of the United States may hold abstractly or it may not be; but the point is that the case at bar is not one where the "*sole grievance*" is that officers of the State charged with executing laws would deprive of appellee of its property. On the contrary, we do not claim that the State Board of Equalization is to be blamed in the matter. Their acts were acts compelled by the highest judiciary of the State of Illinois and the counsel for the appellants might have saved the paper, the ink, the time and the labor of preparing an argument upon a set of hypothetical facts which do not comport with the real thing that was done in this case.

We do not complain that the conduct of the members of the State Board was reprehensible. We do not claim that their acts were unauthorized by the State. We insist that their acts, which would ordinarily have been illegal, were enforced by the courts of the State. The constitution of the State of Illinois provides for equality, and the State Board of Equalization is provided for in the statutes in order that there shall be equality; but the state courts, both low and high, so misinterpret and misconstrue the statutes and the constitution, and so utterly ignore the inherent and dominating spirit of rightful taxation, that they compel the highest taxing body (not a subordinate taxing body) to make a re-assessment against appellee, which manifestly was not the independent judgment of the State Board, and while the first assessment was still valid and unattacked. This was done in a judicial proceeding in which appellee was not a party and could not become a party, and without requiring that notice should be given to appellee, and without permitting the Board to equalize the property

of appellee in the same manner as they had equalized the property of other companies of the same class, and without requiring a deduction on account of the tax for that year already paid and without permitting the Board to use the same method of capital stock valuation as they had used upon other corporations of the same class.

On page 51 of appellant's brief, counsel say :

> " Again where an assessment has been honestly made and a tax lawfully extended on said assessment by the proper officials of the State, a second tax levied pursuant to the second assessment on the same property for the same year is void. Suppose a State official proceeds to collect such a void tax, can a federal court assume jurisdiction on the ground that a party under the above circumstances is deprived of his property without due process of law ? The reason why a Federal Court has no jurisdiction in the case last supposed is plain. The levying of a second tax is done in contravention of the laws of the State of Illinois. The state courts furnish adequate relief against such forbidden and unauthorized acts, and no grounds exist for the intervention of the national courts."

Now let us take this supposititious case and analyze it for the purpose of application to the present case. The first sentence of the above quotation shows precisely what was done in the present case. In the first place, an original assessment was honestly made (and there is no judgment of any court on record to the contrary), and a tax was lawfully extended on this assessment by the proper officials of the State and was paid. Then a second tax was levied pursuant to a second assessment on the same property for the same year. This second tax was compelled by the highest court of the State of Illinois. Now, after the tax upon the second assessment has been extended, and

payment of the tax demanded, must the taxpayer look to the same court which compelled the assessment and ask them to annul it? Can the Federal Court say otherwise than that the State of Illinois has moved in the proceeding,—that the action of its highest court was the action of the State?

It is respectfully submitted that the authorities cited by appellants, such as Strauder v. West Virginia, Virginia v. Rives, The Civil Rights Cases, Kentucky v. Powers, Barney v. City of New York, Manhattan Railway v. New York, *In re* Storti St. L., I. M. & Southern Ry. v. Davis, Owensboro Water Works Company v. Owensboro, Carfer v. Caldwell, and Coulter v. Louisville & Nashville R. R. have no application to the question under discussion. The action appellee and the other public utility corporations complained of was State action; the cases mentioned concededly were decided upon the proposition that the acts complained of in those cases were not State action. The contention in the cases at bar is that the acts complained of was State action, to wit, the action of the State courts, in requiring action to be taken, both by its writ, and the menacing attitude of the State circuit judge, the only result of which was and is, to take from appellee its property without due process of law, and which was a denial of the equal protection of the laws. In the case at bar the State Board of Equalization, at the *command* of the Supreme Court of the State of Illinois, made a re-assessment which was absolutely void because of the existence of an original assessment, still in existence and never attacked.

Without attempting to exhaustively review the decisions of this Court, it is submitted that the cases following support appellee's contention that the acts complained of in the case at bar were State action.

In *Ex parte* Virginia, 100 U. S., 339, the court said at page 347,

> "A state acts by its legislative, its executive or its judicial authorities. It can act in no other

way. The constitutional provision, therefore, must mean that no agency of the State or of the officers or agents by whom its powers are exerted, shall deny to any person within its jurisdiction the equal protection of the laws. Whoever, by virtue of public position under a State government, deprives another of property, life or liberty without due process of law, or denies and takes away the equal protection of the laws, violates the constitutional inhibition ; and as he acts in the name and for the State, and is clothed with the State's power his act is that of the State. This must be so, or the constitutional prohibition has no meaning. Then the State has clothed one of its agents with power to annul or to evade it."

In Pointdexter v. Greenhow, 114 U. S., 270, this court said,

"And it is no objection to the remedy in such cases that the statute whose application in the particular case is sought to be restrained is not void on its face, but is complained of only because its operation in the particular instance works a violation of a constitutional right; for the cases are numerous where the tax laws of a State, which in their general and proper application are perfectly valid, have been held to become void in particular cases either as constitutional regulations of commerce, or as violations of contracts prohibited by the Constitution, or because in some other way, they operate to deprive the party complaining of a right secured to him by the Constitution of the United States."

In Williams v. Mississipi 170, U. S., 213, this Court said, quoting from Yick Wo v. Hopkins, 118 U. S., 356, at page 373 :

"In the present cases we are not obliged to reason from the probable to the actual, and pass

upon the validity of the ordinances complained of as tried merely by the opportunities which their terms afford of unequal and unjust discrimination in their administration. For the cases present the ordinances in actual operation, and the facts shown establish an administration directed so exclusively against a particular class of persons as to warrant and require the conclusion that, whatever may have been the intent of the ordinances as adopted, they are applied by the public authorities charged with their administration, and thus representing the State itself, with a mind so unequal and oppressive as to amount to a practical denial by the State of that equal protection of the laws which is secured to the petitioners, as to all other persons, by the broad and benign provisions of the Fourteenth Amendment to the Constitution of the United States. Though the law itself be fair on its face and impartial in appearance, yet, if it is applied and administered by public authority, with an evil eye and an unequal hand, so as practically to make unjust and illegal discriminations between persons in similar circumstances, material to their rights, the denial of equal justice is still within the prohibition of the Constitution."

In Missouri Pacific Railway Co. v. Nebraska, 164 U. S., 403, it was held that the order of the Board of Transportation acting under a State law requiring a railroad corporation to furnish land for the erection of a grain elevator to a private person was a taking of private property *by the State* in violation of the Fourteenth Amendment.

In Smyth v. Ames, 169 U. S., 466, and in *Reagan v. Trust Company, 154 U. S., 362*, action by a State Railroad Commission in the regulation of rates under a statute authorizing regulation generally was held to be State action, and within the Fourteenth Amendment, if

it resulted in depriving a person of his property without due process of law.

The principle was approved in *Scott v. McNeal, 154 U. S., 34*, where it was held that an act of the State Court is an act of the State.

In C., B. & Q. R. R. Co. v. City of Chicago, 166 U. S., 226, the Court said:—

> "It is not contended, as it could not be, that the Constitution of Illinois deprives the Railroad Company of any right secured by the Fourteenth Amendment, for the State Constitution not only declares that no person shall be deprived of his property without due process of law, but that private property shall not be taken or damaged for public use without just compensation. But it must be observed that the prohibitions of the amendment referred to all the instrumentalities of the State, to its legislative, executive and judicial authorities, and therefore whoever by virtue of public position under a State Government deprives another of any right protected by that aamendment against deprivation by the State 'violates the constitutional inhibition, and as he acts in the name and for the State, and is clothed with the State's power, his act is that of the State.' This must be so, or, as we have often said, the constitutional prohibition has no meaning and 'the State has clothed one of its agents with power to annul or evade it.'"

In Guthrie on the Fourteenth Amendment, it is stated, at page 45:

> "So although the statute or ordinance may be fair on its face and impartial in appearance, but be so applied and administered as to violate the guaranty of due process of law, it is the method of enforcement and not the interpretation that is the injury, and if such enforcement be such as to

deprive the individual of his rights, adequate redress may be had in the Federal Courts under the Fourteenth Amendment."

In the present case, we do not complain that the laws of the State of Illinois are unconstitutional. We do not contend that the State Board of Equalization has been guilty of malfeasance, *but we do contend that the Supreme Court of Illinois and the Circuit Court of Illinois have so applied and administered the laws which are fair on their face as to compel the State Board of Equalization to take a step, which, if enforced, would deprive this complainant of its property without due process of law, and would deny it the equal protection of the laws as guaranteed by the Fourteenth Amendment of the Constitution.*

II. The case made is clearly one of equitable jurisdiction.

It is fully established by the decisions of the State of Illinois and the decisions of the Federal courts that the facts out of which this case arises are sufficient to entitle the complainant to equitable relief. The fact that in 1900 there was a general intentional and systematic under-valuation of property throughout the State of Illinois to the extent of thirty or forty per cent., and the fact that the property of appellee was intentionally assessed at its full value in a re-assessment compelled by a legal proceeding wherein the Company was not a party and could not be heard, and wherein the original assessment was not attacked or held invalid, together with the fact that the tax extended on this second and void re-assessment became a lien upon the property of the complainant, give to the complainant such a clear right to equitable relief that we shall not burden the brief by an exhaustive discussion. We desire, however, to cite several Federal and Illinois cases upon this point.

In *Cummings v. National Bank*, 101 U. S., 153, this court said:

> "Independently of this statute, we are of opinion that when a rule or system of valuation is adopted by those whose duty it is to make the assessment, which is designed to operate unequally and to violate a fundamental principle of the Constitution, and when this rule is applied not solely to one individual, but to a large class of individuals or corporations, then equity may properly interfere to restrain the operation of this unconstitutional exercise of power. That is precisely the case made by this bill, and if supported by the testimony, relief ought to be given."

And in *Stanley v. Supervisors of Albany*, 121 U. S., 535, the court again said:

> "When the over-valuation of property has arisen from the adoption of a rule of appraisement which conflicts with a constitutional or statutory direction, and operates unequally not merely on a single individual but on a large class of individuals or corporations, a party aggrieved may resort to a court of equity to restrain the exaction of the excess, upon payment or tender of what is admitted to be due."

In Railroad and Telephone Companies v. Board of Equalizers of Tennessee. 85 Fed. 302, the court said, through Judge CLARK:

> "Inequality, in the legal and constitutional sense, refers to substantial differences relating to large classes of property, and to differences in the systems or methods by which such properties are assessed for taxation. In *Railway Co. v. Guenther*, 19 Fed. 398, the doctrine upon the subject was stated by Judge KEY as follows:

'Mere inequalities in taxation will not vitiate a tax, if they be accidental and unintentional. These must occur under any system of assessment, and especially under that in force in this State, in which every civil district and ward has its own assessor. There will, of necessity, be many instances in which property will be assessed at more than its value; and more, perhaps, in which it will be assessed at less than its value. These errors and discrepancies will not vitiate the tax. They are inevitable. But a different result follows, should a standard of valuation be used for one species of property which is different from that used for another, if the end reached, necessarily, is taxation of one species higher than the other. The constitution of Tennessee established that all property shall be taxed according to its value, that value to be ascertained in such manner as the legislature shall direct, so that taxes shall be equal and uniform throughout the State. No one species of property from which a tax may be collected shall be taxed higher than any other species of property of the same value. Article 2, Sec. 28. With something of iteration, the principle is emphasized that taxation shall be equal and uniform. If unjust discrimination and difference is made, the tax so imposed may be restrained, and its collection prevented. *Pelton v. Bank*, 101 U. S. 143; *Cummings v. Bank*, *Id.* 153; *City of Chattanooga v. Nashville, C. & St. L. R. Co.*, 7 Lea, 563.'

This statement of the law is in harmony with all of the cases. So, whenever a system of taxation is adopted in a legislative enactment, or methods of procedure are followed by administrative boards under such enactment, by which a large class of individuals or a large class of property is discriminated against, either in respect of the rate of assessment or the rate of levy, and such a result violates a fundamental principle of the Constitution, courts of equity may properly inter-

fere to restrain the operation of such an unconstitutional exercise of power. (Cit. Cummings v. Bank, *supra*).

Other cases, both State and Federal, are now agreed upon this proposition.

It may be as well to say, in this connection, that it is now established that the constitutional requirement of uniformity in taxation applies to the mode of assessment, as well as the rate of levy, and the Constitution may be violated in a lack of just proportion in the value at which property is assessed for taxation, quite as much as in the rate or percentage at which the tax is actually laid on the assessed value. This is the doctrine on which the *Guenther and Cummings Cases* proceeded, and was brought out in *Railroad Tax Cases*, 13 Fed. 722; *Bank v. Hines*, 3 Ohio St. 15; *Board of Sup'rs of Bureau Co. v. Chicago, B. & Q. R. Co.*, 44 Ill. 228; *Chicago & N. W. Ry. Co. v. Board of Sup'rs. of Boone Co., Id. 240;* and *People v. Weaver*, 100 U. S. 544. The principle of these cases has been often reaffirmed, and never questioned in any well-considered case."

And in *Taylor v. L. & N. R. R. Co.*, 88 Fed. 350, Judge TAFT, at page 369 *et seq.*, considers the various cases upon this point, and, speaking of the decisions which might be held to cast a doubt upon the jurisdiction in this class of cases, says, at page 373:

> "They merely emphasize the point that equity will not relieve against an assessment merely because it happens to be at a higher rate than that of other property; that such inequalities, due to mistake, to the fallibility of human judgment, or to other accidental causes, must be borne, for the reason that absolute uniformity cannot be obtained; that, in other words, what may be called 'sporadic cases of discrimination' cannot be remedied by the chancellor. He can only interfere

when it is made clear that there is, with respect to certain species of property, systematic, intentional, and unlawful under-valuations for taxation by the taxing officers, which necessarily effect an unjust discrimination against the species of property of which the complainant is an owner. The reason for the distinction is obvious. The occasional and accidental discriminations are inevitable in every assessment, and are not likely to continue, because not the result of an illegal purpose on the part of any one. If equitable interference in such cases could be invoked, the obstruction to the collection of taxes would be so frequent as to be intolerable. More than this, an action to enjoin a tax is a collateral attack upon the judgment of a quasi judicial tribunal; and it cannot be justified except on the ground of an obvious violation of law or something equivalent to fraud. It does not lie where the injury complained of arises only from the erroneous, but honest, judgment of the lawfully constituted tax tribunal. The interference by the Chancellor in the case at bar and in the Cummings Case rests on something equivalent to fraud in the tribunal imposing the tax. The various boards whose united action is by law intended to effect a uniform assessment on all classes of property are to be regarded as one tribunal, and the whole assessment on all classes of property is to be regarded as one judgment. If any board which is an essential part of the taxing system intentionally, and therefore fraudulently, violates the law, by uniformly undervaluing certain classes of property, the assessment by other boards of other classes of property at the full value, though a literal compliance with the law, makes the whole assessment, considered as one judgment, a fraud upon the fully-assessed property. And this is true although the particular board assessing the complainant's

property may have been wholly free from fault of fraud or intentional discrimination."

In *Kansas City, Fort Scott & Memphis R. R. Co. v. King*, 120 Fed. 614, the Circuit Court of Appeals of the Sixth Circuit, through Mr. Justice DAY, said, at page 620:

> "A preliminary question is made as to the right of a court of equity to entertain jurisdiction of the bill for injunction in this case. The objections raised in this proceeding to the legality of the assessment do not appear upon the face of the proceedings, but arise because of facts set forth in the bill, which show, as is alleged, unlawful discrimination in the assessment of the property of the complainant. This tax, by the law of Tennessee, becomes a lien upon the property. It creates an apparently valid imcumbrance, which casts a cloud upon the title. We think it is settled that in such case the federal courts in equity may entertain a bill to inquire into the validity of the proceedings, and remove the cloud if the assessment shall turn out to be illegal. *Ogden City v. Armstrong*, 168 U. S. 224, 238, 18 Sup. Ct. 98, 42 L. Ed. 444. Upon this branch of the case nothing need be added to the full discussion of the subject in the opinion of Judge TAFT, speaking for this court, in *Taylor v. Railroad Co.*, 31 C. C. A., 537, 88 Fed. 350."

In *C. B. & Q. R. R. v. Cole*, 75 Ill. 591, the Supreme Court of Illinois said:

> "If, as it must be, to be sustained the rule adopted by the Board of Equalization, by which to be governed in making this class of assessments, may be regarded as the honest expression of the judgment of the majority of the board, then it is plain, this assessment, because in viola-

tion of that rule, and consistent with no other reasonable theory of valuation, cannot be the honest judgment of a majority of that board. It is an arbitrary and unreasonable valuation. Because the law has devolved on the Board of Equalization, and not on the courts, the duty of making such valuations, we hold it is not the duty of the courts to exercise any supervisory care over its valuations, so long as it acts within the scope of the powers with which it is invested, and in obedience to what may reasonably be presumed to be an honest judgment, however much we may disagree with it. But whenever the board undertakes to go beyond its jurisdiction, or to fix valuations through prejudice or a reckless disregard of duty, in opposition to what must necessarily be the judgment of all persons of reflection, it is the duty of the courts to interfere and protect tax payers against the consequences of its acts. Where its jurisdiction is conceded, no mere difference of opinion as to the reasonableness of its valuation will justify equitable interference; but its valuation must be the result of honest judgment, and not of mere will."

In *Burton Stock Car Co. v. Traeger*, 187 Ill. 9, the Supreme Court of Illinois said:

"It has, however, been held that, where the valuation is so grossly out of the way as to show that the assessor could not have been honest in his valuation, and must have known of its excessive character, such valuation will be accepted as proof of a fraud upon his part against the taxpayer; and, in such case, a court of equity will grant relief. Whether or not there has been fraud in the excessive valuation of property for taxation is a question, which will depend largely upon the circumstances of each particular case, in which the valuation is made. The excessive valu-

ation by itself does not establish fraud; but the attending circumstances may be looked into in order to determine whether or not the valuation was honestly made."

That there was a general under-valuation of property by the local assessors throughout the State of Illinois in the year 1900 is not only completely established, by the Master's findings and the independent findings of Circuit Judge GROSSCUP, but is so clear that the appellants, even in their extreme zeal, cannot question it.

In his opinion, Judge GROSSCUP says:

> "The record convinces me that the assessment of other property throughout the State, including railroad, for the year 1900, as finally equalized by the State Board of Equalization did not exceed seventy per cent. of the cash value; and that such standard was not adopted by the State Board unintentionally or through inadvertence, but deliberately as a means of arriving at an equalization of taxable values generally throughout the State."

Dr. Samuel M. Barnes, one of the members of the very Board that made the reassessment for 1900, testified as follows (transcript, p. 116):

> "Q. Did you, as a member of the State Board of Equalization, have occasion to inquire about and consider upon what basis the property of the State generally was assessed for the year 1900?
>
> A. I had an idea from what I knew. I was chairman of the Committee on Equalization of town and city lots that year, and I did not pay attention to capital stock only as I knew of it indirectly.
>
> Q. Did you have occasion to consider and learn about the basis of value?
>
> A. Yes, sir.

Q. For the year 1900?

A. Yes, sir.

Q. For both of those years,—for the years 1901 and 1899?

A. Yes, sir.

Q. Will you state whether or not, in your opinion, the property of the State generally was assessed at its full value for those years?

A. It was never assessed at the full cash value so far as I know.

Q. Have you an opinion as to the approximate percentage on which the property throughout the State was assessed?

A. I have.

Q. Will you state what, in your opinion, was the approximate percentage on which property throughout the State was assessed for those years?

A. Well it was less in my judgment than 75%. No I could not give the exact per cent. I know the per cent is hard to get at upon property in different parts of the State, but I base my judgment upon the information I had, and I would say that personal property was assessed at not to exceed 50%. I don't think anywhere in the State, —I don't believe there is a County in the State where it is assessed over 50%,—it may be a little, but the lots, town and city lots, are higher and other lands are some higher; of course lands have been changed in value a good deal, but my conclusion is, and I think it is a fair conclusion of all the members of the Board, that pay any attention to those matters, that 70% was the maximum. You would be safe in saying 70% and we made deductions of 30% on all capital stock.

Q. In 1901?

A. In 1901, yes, sir.

Q. But no such deduction was made in the year 1900?

A. Not for that reassessment. We made no deduction for the reassessment. I don't know

what the previous Board considered or anything about it.

Q. That is that 70% was 70% of the real value and that you figured to be the value required by the statutes upon which the assessment was made upon one-fifth. * * *

A. There is a full value and an assessed value. The assessed value is one-fifth of the full value and the full equalized value as recommended is what we believed to be 70% of the possible full value of the property, and that is what we did."

But, independently of the testimony of this member of the Board (and that of the other members which is to the same effect), this general systematic intentional undervaluation of property throughout the State of Illinois, is completely established by reference to the reports of the State Board of Equalization.

It appears from resolutions (transcript, p. 232) that from the year 1875 down to 1893, with the exception of seven years between 1883 and 1890, it was the custom of the Board of Equalization to pass resolutions as to the opinion of the Board on this question of undervaluation. For instance, in 1875 the following resolution was passed:

"*Resolved* that in the opinion of this Board the real and personal property of this State was assessed for the year 1875 at 50% of its cash value"

and in 1893 the following:

"*Resolved* that in the opinion of the Board the real and personal property of this State as returned by the local assessors for the year 1893, is assessed at an average rate not exceeding 25% of its fair cash value."

From 1893 to 1900, no resolutions of this nature were adopted, but a reference to compilations from the

reports of the State Board (transcript, pp. 235, 236, 237, 238) will show that from 1893 to 1900 the valuations made by the local assessors on various kinds of property did not in any case increase appreciably and that in many cases the valuations did actually decrease materially.

Furthermore, a compilation from the Railroad and Warehouse Commission Reports for the year 1900 shows (transcript, p. 230) that there were 116 railroad companies operating within the State of Illinois, with a total mileage in Illinois of 10,817.10 miles main line and branches. The total amount of capital stock and funded debt of these 116 railroad companies represented by the mileage of main line and branches within this State owned by these railroad companies was $683,331,524. From the report of the State Board of Equalization for the year 1900, the full value of the railroad property in the State of Illinois, including main tracks, branches, second main tracks, etc., was only $389,393,360, or a little more than 50% of the actual full value.

The equitable jurisdiction, however, *need not depend solely upon this established fact* that the appellee's property was assessed at its full value, while the property throughout the State was assessed at only 70% of its full value, but it may be founded on the additional fact that the State Board of Equalization, in making this re-assessment, *used a method* of arriving at the capital stock which was *radically different in its application and result* from that applied to any of the other 327 corporations which escaped the payment of double taxes for the year 1900.

As has been stated before, the State Board of Equalization assessed the capital stock of 334 corporations. The State Board of Equalization Reports show that, excluding the seven corporations involved in this appeal, the average assessment on all these corporations throughout the State was 54% of the amount actually paid in as reported by the corporations; whereas the assessment on the capital stock of appellee was 67%

of the par value of the capital stock. In other words, in this original assessment of 1900, which was ignored by the State Board in its reassessment because, as the court said, it was "too low", was a higher percentage by 13 points than the average applied to other corporations throughout the State. Yet, in spite of the fact that the ratio of assessment of appellee was to this extent higher than that applied to other corporations throughout the State, the State Board of Equalization, acting under the whip of the State Court, placed a new assessment against appellee up to or above its full value, but did not make a reassessment for that year against these other corporations in which the ratio of the assessment to the full value was an average of thirteen points less; and, going further, on this new assessment the State Board, acting under the command of the State Court, added the funded debt to the capital stock in the case of this complainant in order to get a total value, while for that year the funded debt of these other corporations throughout the State was not so added.

In the bill filed by appellee there is an offer to do equity. Appellee tendered whatever sum the Chancellor might decree to be rightfully due. It is true that no specified amount was tendered, for the reason that no portion of the re-assessment was valid. If any reliance should be placed by the appellants upon the failure of the bill to tender a specific amount, that contention would be readily met by *Norwood v. Baker*, 172 U. S., 269. and Forge v Hart 193 U. S. 490 (1904)

Conclusion.

In whatever aspect the cases at bar are viewed, it is apparent the public utility corporations of Chicago have paid to the full their share of the public burden for the year 1900. The Circuit Judge, in requiring the payment of additional taxes in the very

large sums shown by the record, as a condition precedent to granting an injunction restraining the collection of the remainder of the unjust and confiscatory re-assessments that were made under the circumstances shown by the record, certainly did not err on the side of appellees. To cavil at his action in requiring appellees to pay these large amounts is indefensible. He well might have restrained the collection of the entire amounts extended on this void re-assessment.

The decree of the Circuit Court should be affirmed in all things.

JAMES F. MEAGHER,
For Appellee
The People's Gas Light & Coke Company.

Washington, April 5, 1907.

61891

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1906.

No. 420.

SAMUEL B. RAYMOND, COUNTY TREASURER OF COOK COUNTY, ILLINOIS, AND *EX OFFICIO* COUNTY COLLECTOR OF COOK COUNTY, ILLINOIS; JOHN J. HANBERG, HIS SUCCESSOR AS SUCH COUNTY TREASURER AND COUNTY COLLECTOR, ET AL., APPELLANTS,

vs.

CHICAGO TELEPHONE COMPANY.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS.

FILED OCTOBER 2, 1906.

(20,394.)

(20,394.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1906.

No. 429.

SAMUEL B. RAYMOND, COUNTY TREASURER OF COOK COUNTY, ILLINOIS, AND *EX OFFICIO* COUNTY COLLECTOR OF COOK COUNTY, ILLINOIS; JOHN J. HANBERG, HIS SUCCESSOR AS SUCH COUNTY TREASURER AND COUNTY COLLECTOR, ET AL., APPELLANTS,

vs.

CHICAGO TELEPHONE COMPANY.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS.

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1 In the Circuit Court of the United States for the Northern District of Illinois, Eastern Division.

26177.

CHICAGO TELEPHONE COMPANY
vs.
SAMUEL B. RAYMOND, County Treasurer, Cook County, Illinois, and *ex-officio* County Collector, Cook County, Illinois, and JOHN J. HANBERG, His Successor in Office as County Treasurer of Cook County, Illinois, and *ex-officio* County Collector of Cook County, Illinois, and *ex-officio* Town Collector of the Town of South Chicago, and MAURICE FITZGERALD, Town Collector of the Town of South Chicago, and THE CITY OF CHICAGO.

Mr. Charles S. Holt, Mr. Arthur D. Wheeler, Mr. William P. Sidley, solicitors for complainant.
Mr. James Hamilton Lewis, Mr. David K. Tone, Mr. Harry A. Lewis, Mr. William F. Struckman, solicitors for defendants.

2 Pleas in the Circuit Court of the United States for the Northern District of Illinois—Eastern Division, in Chancery sitting at the United States Court room, in the City of Chicago, in said District and Division, before the Honorable Peter S. Grosscup, Circuit Judge of the United States for the Seventh Judicial Circuit, on Wednesday, the twenty-fifth day of July, being one of the days of the regular July term of said Court, in the year of our Lord one thousand nine hundred and six and of our independence the one hundred and thirty first year.

MARSHALL E. SAMPSELL, *Clerk.*

3 In the Circuit Court of the United States for the Northern District of Illinois.

26177.

CHICAGO TELEPHONE COMPANY
vs.
MAURICE FITZGERALD, Town Collector of the Town of South Chicago, and SAMUEL B. RAYMOND, County Treasurer of Cook County.

Be it remembered that on this day to-wit: the twenty-first day of February, 1902, come the complainant in said entitled cause by its solicitors, Messrs. Holt, Wheeler and Sidley and filed in the Clerk's office of said Court its certain Bill of Complaint in words and figures following to-wit:

4 In the United States Circuit Court for the Northern District of Illinois, Northern Division. In Equity.

CHICAGO TELEPHONE COMPANY, Complainant,

vs.

MAURICE FITZGERALD, Town Collector of the Town of South Chicago, and SAMUEL B. RAYMOND, County Treasurer of Cook County, Defendants.

Bill.

Holt, Wheeler & Sidley, solicitors for complainant.

4½ UNITED STATES OF AMERICA,
Northern District of Illinois, Northern Division, ss:

In the Circuit Court of the United States in and for the Northern District of Illinois.

To the Judges of the Circuit Court of the United States for the Northern District of Illinois:

Chicago Telephone Company, a corporation existing under the laws of the State of Illinois, and a citizen of said state, brings this its bill against Maurice Fitzgerald, Town Collector of the Town of South Chicago (commonly and sometimes hereinafter called the "South Town"), in the City of Chicago, County of Cook and State of Illinois, and against Samuel B. Raymond, County Treasurer and *ex-officio* County Collector of said County, both said defendants being citizens of said state and inhabitants of said district.

And thereupon your orator complains and states as follows:

1. Your orator is a corporation created and existing under the laws of the State of Illinois, and is and has been for many years the owner of telephone lines, exchanges and equipment in the Counties of Cook, Will, Du Page, Grundy, Kendall, Kane, Lake and McHenry, in the State of Illinois, and in certain parts of the
5 State of Indiana, and has been and now is engaged in the business of operating telephone lines and exchanges in said counties and states. Its principal office and place of business is situated in the City of Chicago, in Cook County, Illinois, and within the Town of South Chicago in said city.

2. The defendant Maurice Fitzgerald is Town Collector of the said Town of South Chicago, duly elected by the voters of said town, and as such Town Collector is charged by law with the duty of collecting from the several persons named in the Town Collector's books when delivered to him by the County Clerk of said county, the several sums of personal property taxes therein extended opposite the respective names of such persons. In case any person or corporation named in said books shall neglect or refuse to pay personal property taxes, as extended in said books, said defendant is authorized, and perhaps required, by law to collect such taxes by distress and sale of the goods and chattels of each person or corporation.

The defendant Samuel B. Raymond is County Treasurer of said county, duly elected by the voters of said county, and is also *ex-officio* County Collector of said county. At some time between the 10th and 31st days of March, 1902, the defendant Maurice Fitzgerald, as such Town Collector, will be required by law to return to the defendant Samuel B. Raymond, as such County Collector, the tax books for 1901, heretofore received by said Town Collector from said County Clerk, and to make final settlement for the amount of taxes placed in his hands for collection. If it shall then appear from said tax books so returned that any person mentioned
6 therein shall have failed to pay the personal property taxes extended against such person, said defendant Samuel B. Raymond, as such County Collector, is then charged by law with the same duties, and may proceed in the same manner, for the collection of such personal property taxes as is provided in the case of town collectors, and is required to collect the same by distress and sale, if necessary.

3. In the year 1900 your orator furnished the respective assessors of the Counties of Cook, Will, Du Page, Grundy, Kendall, Kane, Lake and McHenry, full information as to all the tangible property, real and personal, in the said respective counties, owned by your orator on the first day of April, 1900, and said Boards of Assessors in said year duly assessed your orator's tangible real and personal property in their respective counties for the year 1900.

Thereafter said respective assessments were considered by the Boards of Review in the several counties named, said Boards of Review being bodies of duly elected officers of said counties, authorized by law, among other things, to reduce or increase the real and personal property assessments of persons and corporations owning property in said counties; your orator furnished to such respective Boards of Review all such further information relative to the property of your orator as was requested and desired; said respective Boards of Review, after due deliberation, made such changes as they deemed just and proper in the assessment of your orator's property as previously determined by said assessors, and as a result of such deliberation and determination the full valuation of all the tangible personal property owned by your orator in the said named coun-
7 ties on the first day of April, 1900, was finally fixed and determined by said Boards of Review for the purposes of taxation, and the aggregate of such valuation in the several named counties was by your orator reported to the State Board of Equalization hereinafter referred to, in accordance with the provisions of law.

4. The regular annual meeting of the year 1900 of the State Board of Equalization of the State of Illinois (said State Board being a body of officers duly elected by the voters of the State of Illinois, and charged by law with the duty, among others, of reviewing and equalizing assessments throughout the state, and of determining and fixing the value of the capital stock, including the franchises, of certain specified corporations), was convened at Springfield, in said state, on or about the 11th day of September, 1900.

At said meeting said State Board of Equalization ascertained and determined that, in order to bring the assessed value of the real and personal property in said named counties to the state average as required by law, certain additions and deductions should be made to and from the assessed value of real and personal property as fixed by the Boards of Review in said respective counties and such additions and deductions were accordingly made by said State Board and were in due course certified to the County Clerks of said respective counties, all of which will more fully appear from the official records and reports of said State Board of Equalization.

As a result of such additions and deductions by the State Board, the basis and standard of assessment throughout the state was adjudged and determined by said State Board to be made uni-
8 form, and as a further result the total valuation of all property owned by your orator on the first day of April, 1900, in said respective counties, and there locally assessed, as determined by said Boards of Review, and so equalized by said State Board, was fixed for all purposes of taxation at the sum of four million one hundred and twenty-three thousand six hundred seventy dollars ($4,123,670). And the assessed value of said property, for purposes of taxation, was fixed at one-fifth thereof, being the sum of eight hundred twenty-four thousand seven hundred thirty-four dollars ($824,734).

At said session of said State Board your orator also appeared by its counsel and gave information as to its property, its shares of capital stock, and evidence and information in respect thereto were also submitted by said Board of Assessors of Cook County and by others. Upon consideration of the matter, said State Board at its regular open session determined and fixed the full value of the capital stock, including the franchise of your orator, at the sum of $4,998,670 and determined and made a net assessment upon the capital stock of your orator of $175,000, being an assessment for that amount in addition to the assessment hereinbefore mentioned made upon the tangible property of your orator, which assessment fully appears in and by the official records showing the proceedings of said State Board.

5. The aforesaid assessment of $175,000 made as aforesaid upon your orator's capital stock was duly certified by said Board to the Auditor of Public Accounts of the State of Illinois, and by him was certified to the County Clerk of Cook County, and said county, city and all other kinds of taxes levied in the year 1900 for and against property situated in the said Town of South Chicago were
9 duly extended against such assessed value of $175,000. Said county, city and other taxes levied in the year 1900 for and against property situated in said Town of South Chicago, and in the other counties and towns in the State of Illinois where your orator had tangible property as aforesaid, were also extended against said assessments hereinbefore mentioned, made upon the tangible property of your orator for the year 1900 in said respective counties and towns, and warrants were duly issued to the Town Collectors of said respective towns directing them to collect from your orator the

taxes as extended in said tax books upon and against the said assessment as made upon the capital stock and tangible property of your orator as hereinbefore stated.

6. Thereafter and during the months of —— in the year 1901, your orator paid to the respective Town Collectors aforesaid the full amount of its taxes as levied and assessed upon its tangible property, and also paid on the 2d day of February, 1901, to the then Collector of the Town of South Chicago the sum of $14,642.25 in full satisfaction of the taxes as extended upon and against the said assessment made by the State Board of Equalization upon the capital stock of your orator for the year 1900, as hereinbefore stated, and that no part of the money so paid by your orator on account of said taxes for the year 1900, has ever been returned or tendered back to your orator, but on the contrary, said money has been paid over by said former Town Collector, less his commissions for collection, either directly or through said County Treasurer, to the City of Chicago, and other taxing or public bodies entitled to receive the same, and has been used or is still retained by such bodies.

10 7. While said State Board was in session as aforesaid, and before any final action had been taken by said State Board to determine and fix the proper assessment to be made upon the capital stock, including the franchise, of your orator, for the purpose of taxation for the year 1900, a petition for mandamus was filed in the Circuit Court of Sangamon County, Illinois, on or about the 10th day of November, 1900, by the People of the State of Illinois at the relation of one Catherine Goggin, a resident of Cook County, and Robert C. Steele, a resident of Sangamon County, Illinois, against the individual members of the State Board, in which petition it was charged, among other things, that said State Board fraudulently intended to adjourn its session without making any assessment upon the capital stock, including the franchise, of your orator, and of twenty-two other corporations doing business in said City of Chicago, and intended illegally to neglect and refuse to discharge the statutory duty obligatory upon it in that regard; and said petition prayed that a writ of mandamus issue against the members of said State Board commanding them to make an assessment for the year 1900 on the capital stock, including the franchise, of your orator, and of the other corporations therein mentioned. Neither your orator nor any of the said other corporations were made parties defendant to said petition, nor ever became parties thereto. An answer to said petition was filed by the said defendants therein on or about the 24th day of November, 1900, in which said defendants denied that they had refused or intended to refuse to discharge their duty as members of said State Board. Thereafter as above set forth, said State Board assessed the capital stock, including the franchise of your orator. And afterwards, to wit: on the 3d day of De-

11 cember, 1900, said board adjourned *sine die*. On or about the 16th day of December, 1900, said mandamus proceeding was continued at the request of the petitioner therein, and no action whatever appears from the record of said case to have been thereafter taken in said case by either party, until about the 12th day of March,

1901. In the meantime, as aforesaid, your orator had paid the taxes extended upon its assessment upon the capital stock so made by the State Board of Equalization for the year 1900, in the belief that said assessment and the taxes levied thereon, were lawful and final, and in compliance with the requirements of the warrant issued to the Town Collector of the said Town of South Chicago, requiring him to collect said taxes from your orator. After said payment said mandamus case was tried on or about the first day of May, 1901. A final judgment was rendered by the said Circuit Court of Sangamon County in said cause, directing a writ of mandamus to issue against the members of said State Board of Equalization, requiring the said State Board and the members thereof, to convene forthwith at the capitol building in the County of Sangamon, and that they forthwith value and assess the capital stock, including the franchises, of each of the corporations mentioned in the petition filed in said cause, including your orator, as of April 1, 1900, "so as to ascertain and determine respectively as to each of said corporations, the fair cash value of its capital stock, including its franchises, over and above the assessed value of the tangible property of such company for the year 1900."

From the judgment so rendered an appeal was prayed by the defendants in said suit to the Supreme Court of Illinois. No
12 evidence was introduced in said cause in said Circuit Court of Sangamon County by the defendants therein, in support of the merits of the assessment theretofore made on the capital stock, including the franchise, of your orator, for the year 1900, and no argument was made, either in said Circuit Court of Sangamon County or in said Supreme Court upon said appeal in support of the merits of the said assessment theretofore made upon the capital stock of your orator for the year 1900, the defense made to said petition for mandamus being rested, by the defendants therein, almost wholly on objections to jurisdiction, and other legal grounds, touching the power of the court to grant the relief prayed for.

On or about the 24th day of October, 1901, the Supreme Court of Illinois affirmed the judgment of said Circuit Court of Sangamon County hereinbefore mentioned, and on or about the 2nd day of November, 1901, a writ of mandamus was issued out of said Circuit Court of Sangamon County in said mandamus proceeding, and said writ was thereafter served upon said members of the State Board of Equalization. Said writ ordered a new capital stock assessment against twenty of the corporations mentioned in said writ, including your orator, and the material portion of said writ was in the words and figures following, to wit:

"Now, therefore, that justice may at once be done, you the said State Board of Equalization and the members thereof, and each of you, are hereby commanded to convene at the Capitol Building in Sangamon County and State of Illinois, and there forthwith to value and assess the capital stock, including the franchises, of each of said corporations and companies herein named, to wit: Chicago City Railway Company, West Chicago Street Railroad Company, North Chi-

cago Street Railroad Company, Chicago Union Traction
13 Company, People's Gas Light and Coke Company, Chicago Telephone Company, Chicago Edison Company, Chicago Consolidated Traction Company, Chicago Electric Transit Company, Chicago and Jefferson Urban Transit Company, Cicero and Proviso Street Railway Company, Evanston Electric Railway Company, North Chicago Electric Railway Company, North Side Electric Street Railway Company, Ogden Street Railway Company, Chicago North Shore Street Railway Company, South Chicago City Railway Company, Chicago Passenger Railway Company, Chicago West Division Railway Company, North Chicago City Railway Company, as of the first day of April, A. D. 1900, in the manner provided by law, so as to ascertain and determine respectively as to each of said corporations, the fair cash value of its capital stock, including the franchise, over and above the assessed value of the tangible property of such corporation for the year 1900. And it is further ordered and commanded that in arriving at said valuations and assessments of the capital stock, including the franchises of the corporations herein named, the said State Board of Equalization and the members thereof, and each of them, shall, from the best information obtainable by it and them, ascertain and take into consideration, among other things, as to each such corporation, as the same was on the 1st day of April, 1900, the market value or if no market value, then the fair cash value, of its shares of stock and the total amount of all its indebtedness, except the indebtedness for current expenses, excluding from such expenses the amount paid for the purchase or improvement of property and the assessed or equalized valuation of all tangible property of said corporations, respectively, on said April 1, 1900."

"And you are further commanded to direct the respective assessments so made to be certified by the Auditor of Public Accounts to the County Clerk of Cook County, that the taxes for all purposes thereon may be extended by said clerk for the year 1900,
14 and you are further commanded to make return to this court on the 22nd day of November, A. D. 1901, in what manner you have complied with this order."

8. Thereafter the regular annual meeting of the State Board of Equalization for the year 1901 was convened at Springfield on the 17th day of September, 1901. By reason of an intervening election, prior to January 1, 1901, the membership of said Board had largely changed. Of the twenty-two members comprising said Board in 1900 only ten remained on said Board in 1901, and the remaining twelve members, constituting a majority of said Board, were new members who had taken no part in the assessment of the capital stock of corporations for 1900. While said Board was in session in 1901, said writ of mandamus under the said judgment of said Circuit Court of Sangamon County was duly served upon its members.

On or about the 9th day of November, 1901, said Board of Equalization by its counsel, who had represented it throughout said mandamus suit, appeared in the Circuit Court of Sangamon County and applied, on behalf of said Board, for an extension of time within

which said Board might make its return to said mandamus writ. Said application was denied by said court, and in manner and in terms which were understood by many, if not all, of the members of said Board, and by said Board, as being menacing to the members of said Board, and as laying down specific instructions to them without leaving them any substantial discretion respecting the method and basis of making the new assessment commanded, and requiring them to assess the capital stock and franchise of your orator at its full cash value, and to make its assessment on said basis for the year
15 1900 without said Board taking into account or consideration the rate of assessment of all taxable property in the State of Illinois as equalized by the State Board of Equalization for the year 1900, and without attempting to equalize the assessment to be made by said Board in obedience to said writ upon the capital stock and franchise of your orator for the year 1900 with the assessments made upon the other taxable property in the State of Illinois for the year 1900, and without taking into account or making any deduction on account thereof the said assessment of $175,000 made in the year 1900 by the State Board of Equalization upon the capital stock and franchise of your orator. Among other things the judge holding said Circuit Court of Sangamon County, in denying said application, made the following observations:

"The contention is made that the mode of procedure is new to the Board, and that it requires more time. There is no reason the court sees why they should have proceeded otherwise than as commanded in the writ. The law is the same to-night as it was a year ago or two years ago, as far as taxation is concerned, in the State of Illinois. There has just simply been a declaration by the highest tribunal of this state that property must be assessed according to the manner prescribed by law and the statute at its fair cash value.

"It is said further that the amount of work that they have to do prevented them from devoting sufficient time to this. As the court views this case, no great amount of time is necessary for that Board to perform their duty. This court decided that what is ordered in the writ be done, and the Supreme Court affirmed that decision. The decision is explicit. There is no reason why any member of that Board should fail to understand exactly what his duty is. All this talk about complications, as to whether they should proceed on that line or this line, or consider this thing or that thing, this
16 amount of per cent. or that amount of per cent. of valuations, is just so much matter to quibble about. This assessment could have been made before the application for the remanding order. It could have been made in a very short time after the writ issued. This is one of the things that they should do. This is one of the orders they should obey, because the time is fixed. They may put off to some other time the assessment of other classes of property, the general assessment for this year, but the assessment of the particular property mentioned in that writ is fixed for a particular date. That is the thing they should have addressed themselves to early in the session, if they wanted to comply with the order of the court and obey the law, and that work they must complete at the time fixed."

Thereafter, and on the 20th day of November, 1901, in supposed obedience to said writ of mandamus, said State Board made an assessment against the capital stock and franchise of your orator in the manner following:

Amount of capital stock paid up as reported by the company	$5,000,000
Full value of capital stock, including franchise, as fixed by the State Board of equalization	8,000,000
Assessed value of capital stock, including franchise, as fixed by the State Board of Equalization	1,600,000
Equalized value of tangible property assessed by local assessors, deducted under requirements of Section 3 of the Revenue Laws	824,734
Net assessment of capital stock, including franchise, being excess of equalized value of capital stock and debt over tangible property assessed by local assessors	775,266

17 Your orator states that its capital stock, on the first day of April, 1900, was $5,000,000, represented by 50,000 shares, of the par value of $100 each, which facts had been made known to said State Board by your orator. And your orator is informed and believes, and therefore states the fact to be, that said State Board arrived at its estimate of the full value of your orator's capital stock, including the franchise, by estimating and determining the value of your orator's capital stock at $160 a share, making $8,000,000, and by taking as the assessed value one-fifth of said amount and deducting therefrom the equalized value of the tangible property of your orator assessed by the local assessor.

Your orator further states that said State Board, in making said assessment, wholly failed and refused to take into account its former assessment upon the capital stock and franchise of your orator for the year 1900, on which your orator had paid taxes, as hereinbefore stated, and also refused and neglected to equalize its assessment upon your orator's capital stock and franchise with the assessments made upon all other taxable property in the State of Illinois for the year 1900, although said board and each member thereof well knew that the rate of valuation or assessment of all other property assessed and taxed in the State of Illinois for the year 1900, as equalized by the State Board of Equalization, did not exceed one-fifth of seventy per cent. of the cash value thereof, and in making the said last assessment of your orator's stock and franchise for the year 1900, said Board and its members acted under the belief that said Board had no right under the writ issued by said Circuit Court of Sangamon County to take into consideration the rate of assessment in

18 the State of Illinois on all other taxable property as finally equalized for the year 1900, but that said Board was limited in making an assessment, in pursuance of said writ, to the ascertainment of the full cash value of the capital stock and franchise of your orator on the first day of April, in the year 1900, and dividing the same by five and deducting from the result so reached the equalized assessed value of the tangible property of your orator for the year

1900, and taking the sum remaining as the amount which they were required to assess against your orator upon its capital stock and franchise for the year 1900 under the said order of said court.

Your orator further states that the fourth paragraph of Section 3 of the Revenue Act of the State of Illinois, under and by virtue of which said State Board of Equalization makes its assessment upon the capital stock of corporations, provides that "Said Board shall adopt such rules and principles for ascertaining the fair cash value of such capital stock as to it may seem equitable and just, and such rules and principles, when so adopted, if not inconsistent with this act, shall be as binding and of the same effect as contained in this act; subject, however, to such change, alteration or amendment as may be found from time to time to be necessary by said Board." That on the 22nd day of November, 1900, said State Board of Equalization adopted the following resolution:

"Resolved, That for the purpose of ascertaining the fair cash value of the capital stock, including the franchise of all companies and associations now or hereafter created under the laws of this state, and for the assessment of the same, or so much thereof as may be found to be in excess of the assessed or equalized value of the tangible property of such companies and associations, re-
19 spectively, we, the State Board of Equalization, hereby adopt the following rules and principles, viz.:

"First. The capital stock of each said company or association shall be valued as an entirety, due consideration being given to the following propositions:

"*a.* To the character and duration of the franchise of said company or association.

"*b.* To the amount of the contribution (if any) demanded of and paid by said company or association under the provisions of any contract or ordinance, to any municipality, as compensation for the use of its franchise privileges in said municipality.

"*c.* The highest and lowest quotations of the shares of stocks of said company or association during the twelve months immediately preceding the dates of assessment, and the number of shares of stock sold at such quotations.

"*d.* Any other fact or condition or circumstance that will assist in arriving at a just and equitable fair cash value of said capital stock.

"Second. From the aggregate amount ascertained as aforesaid, there shall be deducted the aggregate amount of the equalized or assessed valuation of all tangible property, respectively, of such companies and associations, wherever the same may be located (such equalized or assessed valuation of its Illinois property being taken in each case as the same may be determined by the equalization or assessment of property by this board), and the amount remaining, in each case, if any, shall be taken and held to be the amount and fair cash value of the capital stock, including the franchise, which this Board is required by law to assess, respectively, against companies and associations now or hereafter created under the laws of this state.

"Third. The above and foregoing are declared to be the only existing rules and principles adopted by this Board for its government in the assessment of the capital stock of companies or associations."

20 That the Supreme Court of Illinois in said mandamus case held that the rules adopted by said Board, in the resolution above set forth, were in conflict with the Revenue Statute in force in the State of Illinois, and were illegal and inoperative, and did not form any legal basis upon which the said Board could lawfully ascertain and determine the assessment upon the capital stock of corporations in the State of Illinois. That said Board had not and did not adopt any other rules or principles for assessing the capital stock of corporations under and in pursuance of the provisions of the statute above quoted prior to November 20, 1901, or prior to the making of the said second or new assessment upon the capital stock and franchise of your orator; that said State Board of Equalization, on the 10th day of December, in the year 1901, adopted the following resolution:

"Resolved, That for the purpose of ascertaining the fair cash value of the capital stock, including the franchise, of all companies or associations now or hereafter created under the laws of this state, and for the assessment of the same or so much thereof as may be found to be in excess of the equalized valuation of the tangible property of such companies and associations, respectively, we, the State Board of Equalization, hereby adopt the following rules and principles, viz.:

"First. The fair cash value of the shares of capital stock (consideration being given among other things, to the value of the shares of stock and the quotations of such shares in the market over such a period of time as may be reasonable, also the books of said corporations and the returns made to the Auditor of Public Accounts, or such other information as the Board may have or may be able to obtain) and the amount of indebtedness (except indebtedness for current expenses, excluding from such expenses the amount
21 paid for the purchase or improvement of property) shall be combined or added together.

"Said State Board of Equalization shall then equalize said amount so obtained, so that said companies or associations shall be assessed as near as practicable upon a uniform basis with other property throughout the state.

"Second. From the aggregate amount so determined and equalized as aforesaid, there shall be deducted the aggregate equalized valuation of all tangible property of such corporation or association, respectively, and one-fifth of the remainder, if any, shall be taken and held to be the assessed value of the capital stock of such corporation or association, including the franchise, over and above the tangible property thereof.

"Third. All heretofore existing rules of this Board for the assessment of capital stock, including the franchise of corporations, are hereby repealed."

That by Section 1 of Article 12 of the Constitution of the State of Illinois it is provided:

"The General Assembly shall provide such revenue as may be needful by levying a tax by valuation, so that every person and corporation shall pay a tax in proportion to the value of his, her or its property, such value to be ascertained by some person or persons to be elected or appointed in such manner as the General Assembly shall direct, and not otherwise."

That the foregoing constitutional provision requires that all property assessed for taxation in the State of Illinois, in any year, should be assessed upon the same basis or percentage of its actual value, and that said provision is applicable to the assessment of the capital stock and franchises of corporations under the General Revenue Law of the State of Illinois, so that by virtue of said constitutional provision, taken in connection with the Revenue Statute of the
22 State of Illinois, it is the duty of the State Board of Equalization to assess all property, including the capital stock or corporations, which it is by law authorized to assess, at the same rate or percentage of its actual value as it shall find and determine that all other taxable property in the State of Illinois is assessed and taxed for the same year; that said State Board of Equalization is not given any power by the statute in equalizing the assessments made by the local assessing bodies to raise the aggregate of such assessments in the State of Illinois more than one per cent., its function and duty being practically limited to the equalization of assessments, leaving the aggregate of the assessments made by the local assessing bodies at the same amount as originally fixed, so that the basis of the assessment of property in the State of Illinois is fixed in each year by the local assessing authorities, the function and duties of the State Board of Equalization being to equalize the said local assessments, and to make its original assessments of all property assessed by it in each year upon the same basis or percentage of actual value as all other property is assessed for such year in the State of Illinois, after such assessments are equalized by said State Board.

Your orator further states that the assessed value of all the taxable property in the State of Illinois for the year 1899 was $953,099,468, and that the aggregate equalized assessed value of all property in Cook County, in the State of Illinois, for the year 1899 was $381,548,581; that the aggregate equalized assessed value of all the taxable property in the State of Illinois for the year 1900 was $809,733,405; that the aggregate of the equalized assessed value of all property in the County of Cook for the year 1900 was
23 $306,957,900; that the aggregate equalized assessed value of all the taxable property in the State of Illinois for the year 1901 was $991,231,829; that the aggregate of the equalized assessed value of all taxable property in the County of Cook for the year 1901 was $408,189,960; that the aggregate assessment of all the taxable property in Cook County, as made by the local assessors for the year 1899 was $378,828,291; that the aggregate of the assessed value of all the taxable property in Cook County, as assessed by the

local assessing bodies for the year 1900 was $260,564,522, being a reduction or decrease in the assessment made by the local assessing bodies in Cook County of over $118,000,000, or more than thirty-one per cent.; that the total assessed value by the local assessing authorities of all the taxable property assessed by them in Cook County for the year 1901 was $365,191,329.

Your orator further states that the net assessment made by the State Board of Equalization, under the writ hereinbefore mentioned, upon the capital stock and franchise of the several corporations mentioned in said writ were as follows:

Chicago City Railway Company	$5,001,300
People's Gas Light and Coke Company	9,217,067
Chicago Telephone Company	775,266
Chicago Edison Company	1,800,761
South Chicago City Railway Company	433,886
Chicago Union Traction Company, Chicago Consolidated Traction Co. (and companies owning the lines leased by them)	15,505,177
Total	$32,733,457

and that the new capital stock assessments made against said corporations by said Board at the same session, after adopting
24 the said rule under which it equalized its original assessments with the equalized assessment of all other taxable property in the State of Illinois, were as follows:

Chicago City Railway Company	$2,541,309
People's Gas Light and Coke Company	5,782,997
Chicago Telephone Company	574,974
Chicago Edison Company	737,789
South Chicago City Railway Company	120,000
Chicago Consolidated Traction Company, Chicago Union Traction Company and companies owning lines leased by them	6,786,091
Total	$16,543,160

Your orator shows that not only was there no actual decrease in the value of its property and franchise on April 1, 1901, as compared with April 1, 1900, but that in so far as there had been any change the value had increased rather than diminished.

Your orator further states that the assessments made by the State Board of Equalization in the year 1899, upon the capital stock and franchises of corporations did not materially differ or vary from the amount of the assessments made by said State Board upon the capital stock and franchises of the corporations in the year 1900, and that the variations above shown in the aggregate of the assessed valuations of the property in the State of Illinois, and in the County of Cook for the years 1899 and 1900, did not to any material extent

arise or grow out of any differences in the amounts of the assessments made by the State Board upon the capital stock and franchises of corporations.

Your orator further shows and states that the equalized assessed valuation of all the taxable property in the State of Illinois
25 for the year 1899 did not equal one-fifth of the actual value of the property so assessed; that said assessment for the year 1899 was made by the local assessing bodies in view of the provision then contained in an amendment to the Revenue Act, limiting the aggregate rate of taxation, with certain exceptions, to five per cent. of the equalized assessed value of the taxable property, which provision of the statute so limiting the rate of taxation was adjudged and decided by the Supreme Court of Illinois to be unconstitutional and void, and that after said decision and in consideration thereof the local assessing bodies, for the purpose of limiting the rate of taxation under the other limitations contained in the statute, reduced the assessed valuation made by them in the year 1900 of the taxable property for the year 1900, and that the Board of Review of the said County of Cook to that end, and for that reason, in the year 1900 made the reduction in the assessed value of the taxable property in Cook County hereinbefore mentioned, of the sum of $118,000,000. And your orator avers and charges the fact to be that the average equalized assessed value of taxable property in the State of Illinois for the year 1900 did not exceed one-fifth of seventy per cent. of the cash value thereof, either in fact or in the opinion and judgment of the members of the said State Board of Equalization, and of said Board, and that if said Board of Equalization had considered itself at liberty under the writ hereinbefore mentioned, to equalize its assessment upon your orator's capital stock with the equalized assessed valuation of all other property assessed for taxation in the State of Illinois for the year 1900, it would have resulted in a reduction of not less than thirty per cent. in the value placed upon said capital stock,
26 of which one-fifth was required to be taken as the basis of taxation, and would have resulted in a reduction of not less than $232,580 in the net assessment made by said State Board in the year 1901 upon the capital stock, including the franchise of your orator, for the year 1900.

Said assessment for the year 1901 of your orator's capital stock, including the franchise, and said assessments for the year 1901 upon the capital stock of the other corporations named in said writ, show that in no event would the said new assessment against the capital stock and franchise of your orator for the year 1900 have exceeded the sum of $542,687 if the said State Board, and the members thereof, had exercised their judgment and discretion in equalizing the valuation of your orator's capital stock and franchise for taxation for the year 1900 with the equalized assessment of all other taxable property assessed in the State of Illinois for the year 1900.

And your orator, while insisting that such reduction of at least thirty per cent. is the very smallest measure of relief to which it can be entitled in this cause, further protests and insists that said valua-

tion of $775,266, as the full value of your orator's franchise for the year 1900, was and is grossly excessive.

But your orator is informed and believes, and so states the fact to be, that said Board, in making said new assessment for the year 1900, and in failing to equalize the same with the assessment made upon all other property in the State of Illinois for the year 1900, considered itself to be coerced by the writ issued by said Circuit Court of Sangamon County, and to be acting under specific instructions from said court, and to be debarred from all exercise of independ-
27 ent judgment and discretion in regard to the valuation to be placed upon your orator's capital stock and franchise for the year 1900, and for that reason only failed to reduce the amount of its said assessments so as to correspond with the assessments upon other property in the state for said year. Your orator is informed and believes, and therefore states the fact to be that the excess of the capital stock assessments against the corporations named in said writ over and above the net capital stock assessments against the same corporations for the year 1901 arose almost entirely out of the failure of said Board to equalize the said capital stock assessment for 1900 with the assessments made for the same year of all other taxable property in the State of Illinois.

9. Said second assessment for the year 1900 of your orator's capital stock, including the franchise, was duly certified by said State Board to the Auditor of Public Accounts of Illinois, and by said last named officer was certified to the County Clerk of Cook County. Said County Clerk has, in connection with his extension of taxes generally for the year 1901, made an extension of taxes against said new capital stock assessment, as deemed by him to be required by law, and has recently certified and delivered to said defendant, Maurice Fitzgerald, as town collector of said Town of South Chicago, where any capital stock tax against your orator is properly payable, a tax book or tax books, with a warrant or warrants annexed thereto, as required by law, authorizing and requiring said defendant to enforce the collection according to law of all the taxes so extended against such new and second capital stock assessment. The aggregate amount of taxes and penalty extended against said new capital stock assessment for the year 1900, and included in the war-
28 rant so issued to said defendant, Maurice Fitzgerald, is $64,064.16, made up as follows:

The valuation upon which said taxes are extended is.....$775,266

And the rate of the several taxes extended thereon are as follows:

State	.005
County	.00715
City	.02425
School	.033
Library	.00086
Drainage	.005
Park	.00344

Total rate levied, .0787%, making total tax extended without penalty, $60,913.43, to which has been added an item of $3,150.73, as penalty or interest by reason of delay in the payment of said taxes, said penalty being intended to be imposed upon your orator under the supposed authority of section 276 of the Illinois General Revenue Law of 1872, for alleged failure on the part of your orator to pay taxes for the year 1900 at some earlier date, as to which last named item your orator says that it paid the taxes levied and extended against its property for the year 1900, as extended upon the warrant issued for the collection of the taxes of 1900, before any penalty or interest accrued thereon, and that your orator has not been delinquent in any respect with reference to the payment of any taxes upon said new capital stock assessment; and your orator charges that there is no authority of law for imposing any penalty or interest upon your orator by reason of the non-payment of the taxes extended upon said new capital stock assessment.

29 10. Your orator charges that said new capital stock assessment for 1900 against your orator is illegal, unequal, wrongful and in violation of the Constitution of the United States, as well as in violation of the Constitution of the State of Illinois, for the following reasons, among others:

(1) The first original assessment made in the year 1900 against the capital stock and franchise of your orator for the year 1900, by the State Board of Equalization, as hereinbefore set forth, and upon which taxes have been extended and paid by your orator as aforesaid, has never been vacated or set aside in any judicial or other proceeding to which your orator was a party. In said mandamus proceeding in said Circuit Court of Sangamon County, said court had no power or jurisdiction to set aside, annul or vacate said original capital stock assessment made against your orator during the pendency of said proceeding. Your orator was not a party to said proceeding, and had no opportunity to be heard therein, and your orator charges that said original assessment was legal and valid and that your orator was entitled to rely, and did and does rely upon said original assessment as the final capital stock assessment against your orator for the year 1900, and that such original assessment could only be set aside if at all, in some proceeding to which your orator was a party; that the making of said new assessment by said State Board in November, 1901, and the collection of the taxes extended thereon, now being attempted to be made, as hereinbefore set forth, constitute an attempt to take your orator's property without due process of law, and are in violation of the fourteenth amendment to the Constitution of the United States, and of the Constitution of the State of Illinois.

30 (2) After having made said original capital stock assessment against your orator in December, 1900, and after having adjourned its annual session for that year, said State Board had no power or jurisdiction to make a new capital stock assessment for 1900 against your orator. That said new assessment was made without authority of law and is void, and the collection of said taxes extended upon said new assessment would be a taking of your ora-

tor's property without due process of law, and in violation of said fourteenth amendment to the Constitution of the United States, and of the Constitution of the State of Illinois.

(3) Under the coercion of said writ of mandamus, issued by the said Circuit Court of Sangamon County, said State Board of Equalization selected out of the body of property owners in Illinois your orator and nineteen other corporate taxpayers, and subjected your orator and said nineteen other corporate taxpayers to an additional, oppressive, discriminating and unjust capital stock assessment, whereby it sought to subject them to more than their proportionate share of taxation, and by such unequal and such unlawfully increased assessment and taxation your orator is denied the equal protection of the laws guaranteed by said fourteenth amendment.

(4) The said State Board of Equalization in the year 1900 made its assessments upon the capital stock of all the corporations in the State of Illinois, which said State Board is authorized to assess, being 334 in number, under the rules adopted by said State Board in November, 1900, and under which rules the original assessment was made against your orator's capital stock. Under said rules said original assessment against your orator was made on the
31 same basis of valuation as the assessments made by said Board in said year against all other corporations subject to capital stock assessment in the State of Illinois; said writ of mandamus required said Board to make said new assessment against your orator's capital stock for the year 1900 upon an entirely different basis from that prescribed in said rules, and from that upon which all other corporations in the State of Illinois (except those specifically mentioned in said writ of mandamus), had been assessed for the year 1900, and said new assessment upon the capital stock of your orator for the year 1900 was in fact made by said State Board upon an entirely different basis from that applied by said State Board in assessing the capital stock of all other corporations in the State of Illinois for the year 1900, except those named in said writ of mandamus, and no new or additional assessment upon the capital stock of any other of the corporations of Illinois, except those specifically named in said writ has been made, nor are any proceedings pending or contemplated for a new or additional assessment on the capital stock of any other of the corporations subject to capital stock assessment in the State of Illinois. By such action of said Board your orator has been deprived of the equal protection of the laws in violation of said fourteenth amendment to the Constitution of the United States, and your orator is thereby subjected to excessive and disproportionate taxation as compared with all other corporations subject to capital stock assessment in the State of Illinois, with the exception of those specifically mentioned in said writ, contrary to the Constitution of the State of Illinois.

11. Said new capital stock assessment for 1900 if not absolutely void for the reasons hereinbefore set forth is, nevertheless, ex-
32 cessive, and the taxes extended against it should be reduced to a certain extent, for the following reasons:

(*a*) The sum of $14,642.25, paid by your orator as taxes upon

its original capital stock assessment for 1900, hereinbefore set forth, should have been deducted by said County Clerk from the amount of the taxes extended upon said new capital stock assessment for the year 1900, and should now be deducted from the amount called for by the said warrant in the hands of the said defendant, Maurice Fitzgerald, and the sum of $3,150.73, included in said warrant by way of interest or penalty, should also be deducted from the amount extended against your orator's capital stock assessment for the year 1900 in said warrant. If your orator should be compelled to pay the amount called for by said warrant as taxes upon its capital stock assessment for the year 1900, your orator will be compelled to pay taxes twice on a part of its capital stock, and also to pay a large penalty upon said capital stock taxes without being in default, and your orator would to that extent be deprived of its property without due process of law, and be denied the equal protection of the laws, in violation of the fourteenth amendment to the Constitution of the United States.

(*b*) Said Board of Equalization, under coercion as aforesaid, and only because of such coercion, failed to exercise its independent judgment and discretion as required by law in making said new assessment against your orator's capital stock for the year 1900, and failed to equalize said new capital stock assessment against your orator by making an appropriate reduction in its valuation of your orator's capital stock for the year 1900, in order to make the same uniform with the equalized assessment made against all other taxable
32¼ property in the State of Illinois for the year 1900, by reason whereof your orator, if compelled to pay the said taxes so extended against said new capital stock assessment for the year 1900, would be subjected to a greater burden of taxation for the year 1900 than its proportionate share as determined by the value fixed by the State Board of Equalization upon its capital stock and franchise as compared with the average rate of assessment of all the taxable property in the State of Illinois for the year 1900, and your orator claims that but for such coercion said State Board of Equalization would have made and in law ought to have made a reduction of at least 30% in its second or new valuation of the capital stock and franchise of your orator for the year 1900, in order to equalize the assessment thereof with the equalized assessment of all other taxable property in the State of Illinois assessed for the year 1900, and would have reduced the net assesment made by the State Board upon your orator's capital stock and franchise from $775,266 to a sum not exceeding $542,687, and that unless such reduction is now made in said assessment your orator will be deprived of the equal protection of the laws guaranteed to it under said fourteenth amendment, and will be subjected to excessive, unjust and discriminating taxation, contrary to the Constitution of the State of Illinois.

12. Your orator shows that in case it should fail or refuse to pay said taxes and penalty extended against your orator upon said new capital stock assessment for 1900, said defendant, Maurice Fitzgerald, as Town Collector as aforesaid, and said defendant, Samuel B. Raymond, as such County Collector, after the return of said warrant for

the year 1900 to him (if said taxes still remain unpaid), would be required to enforce the collection of said taxes against your
32½ orator, and to that end to levy the same by distress and sale of the goods and chattels of your orator, and that such proceeding by distress and sale, cannot be prevented or defended against by your orator otherwise than by a bill in chancery. That your orator's personal property consists chiefly of its lines, instruments and apparatus, and other personal property actually used in its business of affording communication by telephone in the City of Chicago and elsewhere, and that a levy of said tax by distress upon any part of your orator's personal property would interfere and interrupt the operation of your orator's telephone system in the City of Chicago and elsewhere, and would greatly embarrass not only your orator in the carrying on of its said business in operating its telephone lines and exchanges, but would embarrass and injure your orator's patrons, who use your orator's lines and facilities in their business in the said City of Chicago and elsewhere, and that the property so levied upon and sold could not be recovered by your orator in an action of replevin, nor by any other legal proceeding. That after collecting said taxes the defendant is required by law to pay over and distribute such taxes in the proportions designated in its tax book or books to the city treasurer of the City of Chicago, the county treasurer of Cook County, the treasurer of the Sanitary District, and the other officers and authorities entitled to receive the same. That if your orator should pay said taxes to said town collector, your orator to recover back the same would be obliged to bring a separate suit against each one of the several taxing bodies, receiving its proportionate share of said taxes, thereby necessitating a multiplicity of suits, from which this court, as a court of equity, should relieve it; and that the portion
33 of said taxes which would go to the State of Illinois, could not be collected back by your orator by any legal proceeding whatsoever, and that if repayment could be compelled from said City of Chicago and other taxing bodies, such repayment would not cover the costs including commissions deducted for the collection of said taxes. By reason of which matters the collection of the said taxes so extended upon said capital stock assessment would inflict upon your orator great and irreparable injury, for which your orator has not a complete or adequate remedy at law.

Forasmuch, therefore, as your orator is remediless, save in a court of equity, where matters of this sort are properly cognizable and relievable, your orator prays that the defendants, and each of them, may be summoned to appear and answer this bill according to the usual practice in chancery, but not under oath, answers under oath being hereby expressly waived; that the court will declare and decree that said new assessment of $775,266 upon the capital stock and franchise of your orator for the year 1900, and the taxes extended and levied thereon are illegal and void, and are in violation of the fourteenth amendment of the Constitution of the United States and of the Constitution of the State of Illinois; that the court perpetually enjoin the defendants, and each of them, from collecting said taxes,

or any part thereof; that if a part only of said taxes shall be found by this court to be illegal and void, that the relief prayed for against the whole of said taxes may be granted as to so much thereof as shall be found by this court to be illegal (and in such case your orator is ready and willing and hereby offers to pay so much of said taxes as shall not be held by this court to be illegal and void);

34 that the defendants be temporarily restrained from attempting in any manner to collect said taxes, and every part thereof until the further order of this court, and that your orator may have such further and other relief as may be equitable, and as may be necessary to fully protect your orator's rights in the premises.

CHICAGO TELEPHONE COMPANY,
By CHARLES E. MOSLEY,
Secretary and Treasurer.

HOLT, WHEELER & SIDLEY, *Solicitors.*

STATE OF ILLINOIS, *County of Cook, ss:*

Charles E. Mosley being first duly sworn, deposes and says that he is the secretary and treasurer of the Chicago Telephone Company, complainant in the above entitled cause; that he has read the foregoing bill of complaint and knows the contents thereof, and that the matters and things therein set forth are true, except as to such matters and things as are therein stated to be made upon information and belief, and as to such matters as are stated to be made upon information and belief, affiant believes the same to be true.

CHARLES E. MOSLEY.

Subscribed and sworn to before me this — day of February, A. D. 1902.

[SEAL.] WILLIAM J. BOYD,
Notary Public.

(Endorsed:) Filed Feb. 21, 1902 S. W. Burnham, Clerk.

35 And on to-wit: the twenty-eighth day of June, 1902, come Samuel B. Raymond, County Treasurer and Maurice Fitzgerald, Collector by their solicitors and filed in the clerk's office of said Court their certain Answer in words and figures following to-wit:

Answer.

In the United States Circuit Court, Northern District of Illinois.

No. —.

CHICAGO TELEPHONE COMPANY, Complainant,

vs.

SAMUEL B. RAYMOND, County Treasurer and *ex-officio* County Collector of *of* Cook County, and MAURICE FITZGERALD, Collector of the Town of South Chicago, Defendants.

The joint and several answer of Samuel B. Raymond, County Treasurer and *ex-officio* County Collector of Cook, and Maurice Fitzgerald, Collector of the Town of South Chicago, defendants in the above entitled cause, by Edwin W. Sims, County Attorney, Frank L. Shepard, Assistant County Attorney, and William F. Struckmann, Assistant County Attorney, their solicitors, to the bill of complaint of the Chicago Telephone Company, complainant.

These defendants, now and at all times hereafter saving and reserving unto themselves all benefit and advantage of exception which can or may be had or taken to the many errors, uncertainties and other imperfections in the said bill contained, for answer thereunto, or to so much and such parts thereof, as these defendants are advised it is or are material or necessary for them to make answer unto, answering, say:—

36 1. These defendants admit that the complainant is a corporation created and existing under the laws of the State of Illinois, and is the owner of telephone lines, exchanges and equipments in the several counties named in par. 1 of complainant's bill, with its principal office and place of business in the Town of South Chicago, Cook County, Illinois.

2. These defendants admit that the defendant Maurice Fitzgerald is the collector of the Town of South Chicago, and as such is charged by law with the duty of collecting taxes due and payable from persons in said town; that the defendant Raymond is the County Treasurer and *ex-officio* County Collector of said County, and that in due course of time the collector's warrants for said Town of South Chicago will come into the hands of this defendant Samuel B. Raymond for execution.

3. These defendants say that as to the allegations in par. 3 of complainant's bill of complainant that the said complainant furnished to the respective assessors of the Counties of Will, Du Page, Grundy, Kendall, Kane, Lake and McHenry full information as to the tangible property of complainant owned by it on the 1st day of April, 1900, and that the respective assessing tribunals of said counties made assessments of the same, these defendants have no knowledge or information, save as contained in said bill, and neither admit nor deny the same, but, if the same should become material to

the issues involved, call for strict proof thereof. But these defendants deny that the said complainant, or anyone for it, prepared and filed with the proper officers a schedule of its property assessable in Cook County for the year 1900 in the manner and form and at the time required by law; and deny that full information concerning its tangible property in said county was furnished, as alleged in said bill; but these defendants state and allege the fact to be, that the local assessing tribunals of the County of Cook did make an assessment of the tangiable property owned by complainant on the 1st day of April, 1900, and subject to assessment for that year, and returned said assessment, as required by law.

37 4. These defendants admit that the State Board of Equalization convened in regular session on or about the 11th day of September, 1900, and that said State Board of Equalization equalized the assessments of tangible property in the State as between the different counties of the State, and that the total full valuation of complainant's said tangible property owned by it on the 1st day of April, 1900, was fixed and equalized by said State Board at the full value of $4,123,670. and at the assessed value of $824,734. And these defendants admit that complainant by its officers appeared before said State Board of Equalization, and that said State Board of Equalization made an alleged finding of the full value of complainant's capital stock and franchise of the sum of $4,998,670. and of an alleged assessed value of $999,734, and deducted from said alleged assessed value the equalized assessed value of complainant's tangible property of $824,734 leaving an alleged net assessment of the capital stock and franchise of complainant for the year 1900 in excess of the said equalized value of tangible property of $175,000.

5. These defendants admit that said alleged assessment of $175,000 was certified to the County Clerk of Cook County, and that said County Clerk extended against said assessment the different taxes levied in the year 1900 proper to be extended against the same, and that warrants for the collection of said taxes were duly issued to the Town Collector of the Town of South Chicago for execution.

6. These defendants admit that the complainant paid the full amount of taxes levied and extended upon the assessment of its tangible property, and also paid to the then collector of the Town of South Chicago the sum of $14,642.25, being the amount of taxes extended against said alleged net assessment of the capital stock and franchise of complainant of $175,000., and admit that no portion of said taxes has been returned or tendered back to the complain-

38 ant; but these defendants deny that the said payment is in full satisfaction of all taxes against a proper assessment of complainant's capital stock and franchise for the year 1900.

7. These defendants further answering state and allege the fact to be, that the full fair cash value of complainant's capital stock and franchise on April 1, 1900 was far in excess of $4,998,670., and that the actual fair cash value thereof on said date was in excess of $30,619,000; that notwithstanding the fair cash value of complainant's capital stock and franchise as aforesaid, the said State Board of Equalization in total disregard of its duty, as required by law,

wilfully and fraudulently found the full value of complainant's capital stock and franchise as above set forth, and set down an assessment of the same over and above the assessment of its tangible property by the local assessors as above set forth, which said fraudulent and illegal action on the part of the said State Board of Equalization in relation to the valuation and assessment of complainant's property was had by and with the concurrent fraudulent action of complainant itself in its failure to properly list and schedule its property for purposes of taxation, and to furnish the statements required by law, and in its fraudulent representations to the said State Board; and these defendants further state and allege the fact to be, that the said alleged assessment was and has been long prior to the filing of this bill held and declared by the Circuit Court of Sangamon County and by the Supreme Court of the State of Illinois to be null and void; and a re-assessment of the capital stock and franchise of the said complainant, over and above the assessed value of its tangible property, was ordered by the Circuit Court of Sangamon County. These defendants admit that while the State Board was still in session for the year 1900, a petition for mandamus was filed in the Cir-
39 cuit Court of Sangamon County by the People of the State of Illinois upon the relation of one Catherine Goggin, a resident of said Cook County, and Robert C. Steele, a resident of said Sangamon County; these defendants say and allege the fact to be, that the proceedings and judgment heretofore referred to, in and by which a new assessment was ordered as aforesaid, were had in said mandamus proceeding in said Circuit Court of Sangamon County. These defendants further state and allege the fact to be, that it was prayed in said petition for mandamus, that said State Board of Equalization be commanded to make a lawful assessment for the year 1900 upon the capital stock and franchise of the complainant herein and other corporations named in said petition. These defendants admit that neither the complainant herein, nor any of said other corporations were made parties defendant to said petition; but these defendants say and allege the fact to be, that this complainant and the other corporations named in said petition were requested and directed by the said State Board to appear in said mandamus proceedings by their own solicitors, and to make such defense or defenses as they might deem advisable. That this complainant and said other corporations, after a due consideration of the premises, employed attorneys and counsellors, who appeared in said proceedings in the Circuit Court of Sangamon County, and in the appeal taken to the Supreme Court of the State of Illinois, and made such defenses as they deemed advisable, which defenses were made for the benefit of the complainant herein and the other said corporations as fully and effectually as if this complainant and said other corporations had been parties defendant to said petition for mandamus by name. These defendants admit that final judgment was rendered by the Circuit Court of Sangamon County, and that an appeal
40 was prayed to the Supreme Court of the State of Illinois, but these defendants have no knowledge or information, save as contained in said bill of complaint, as to what defenses were inter-

posed in said Circuit Court or in said Supreme Court, and neither admit nor deny the allegations in said bill concerning the same, but call for strict proof thereof. These defendants admit that the Supreme Court of Illinois on or about the 24th day of October, 1901, affirmed the said judgment of the said Circuit Court of Sangamon County, and that thereafter a peremptory writ of mandamus was issued by the Circuit Court of Sangamon — commanding substantially as on pages 9 & 10 of complainant's bill of complaint set forth.

8th. These defendants admit that on or about the 17th day of September, 1901, the State Board of Equalization convened at Springfield, Illinois, in regular session, as required by law; that prior thereto an election had intervened between the session of the Board in 1900 and the session in 1901, and that the membership of said State Board had largely changed; that while said State Board was in regular session in 1901 a peremptory writ of mandamus under the judgment of said Sangamon County Circuit Court was served upon the members thereof. These defendants say as to the allegations in said bill of complaint, that the said State Board by its counsel appeared before said Circuit Court of Sangamon County and applied for an extension of time in which to make its return to said mandamus writ, they have no knowledge and are not informed save as by said bill, and neither admit nor deny the same, but if the same should become material to the issues involved herein, call for strict proof thereof; and as to the allegations in said bill of complaint contained, as to what disposition was made of said alleged application, and as to the language alleged to have been used by the jud-e of said Circuit Court these defendants have no knowledge or in-
41 formation, save as by said bill, and neither admit nor deny the same, but if the same should become material to the issues involved herein call for strict proof thereof. These defendants further answering admit that thereafter, and on or about the 20th day of November, 1901, the said State Board of Equalization made an assessment of the capital stock and franchise of the complainant in the several amounts as alleged on page 13 of complainant's bill of complaint; but these defendants deny that said State Board in making said assessment failed or refused to take into account any former assessment for the year 1900, or refused and neglected to equalize the assessment of complainant's capital stock and franchise with the assessments on all other taxable property in the State of Illinois for said year; and deny that the assessed valuation for the year 1900 of such other property did not exceed one-fifth of 70 per cent. of the cash value thereof, but these defendants state and allege the fact to be that the other property of the State was by the different assessing tribunals assessed at what such assessing tribunals considered and ascertained to be one-fifth of the full fair cash value thereof. And these defendants deny that under the said mandate of the said Circuit Court of Sangamon County, the said State Board of Equalization had no right to take into consideration the rate of assessment of other taxable property as equalized for the year 1900; and deny that said State Board acted under the belief that they had no such

rights, but these defendants state and allege the fact to be, that in making said assessment in pursuance to said mandate, the said State Board of Equalization after taking into consideration the assessments on other properties and the value of complainant's property in pursuance of the rules of said State Board of Equalization
42 which had theretofore been adopted by said Board and which had received the sanction of the Supreme Court of the State of Illinois, ascertained and fixed for purposes of taxation for the year 1901 the value of complainant's capital stock and franchise as on page 13 of complainant's bill of complaint set forth. And these defendants further state and allege the fact to be, that the complainant herein had due notice, knowledge and information that it was the duty of said State Board at its said session in 1901 to make an assessment of the capital stock and franchise of the complainant for the year 1901, and that said State Board intended to make such assessment, and that complainant had the right to appear before said Board in regard to the same. These defendants admit that on or about the 22nd day of November, 1900, the State Board of Equalization of the State of Illinois adopted certain pretended resolutions or rules substantially as on pages 15 and 16 of complainant's bill of complaint set forth, and admit that the Supreme Court of the State of Illinois in said mandamus proceedings adjudged the said rules were in conflict with the revenue laws of the State of Illinois, and were illegal and inoperative; and these defendants state and allege the fact to be, that the rules which were theretofore in force remained in force until on or about the 10th day of December, 1901, when the said State Board adopted certain other rules which are substantially set forth on pages 17 and 18 of complainant's bill of complaint.

These defendants further answering say as to the allegations in said bill of complaint concerning the valuations of taxable property in the State of Illinois and in the County of Cook for the years 1899, 1900 and 1901, they have no knowledge and are not informed, save as by said bill of complaint, and neither admit nor deny the same, but if such facts or allegations should become material to the
43 issues herein, these defendants call for strict proof thereof. These defendants deny that the equalized valuation of all taxable property for the year 1899 did not equal one-fifth of the actual value of such property; and deny that the local assessing tribunals of the State assessed property within their jurisdiction with any other view or upon any other basis than upon one-fifth of what they considered and determined to be the actual fair cash value. These defendants further answering deny that the equalized assessed valuation of taxable property in the State of Illinois for the year 1900 did not exceed one-fifth of 70 per cent. of the actual fair cash value thereof, but state and allege the fact to be, that the different assessing tribunals of the State assessed the property subject to taxation by them at an assessed value of one-fifth of what such tribunals considered and determined to be the actual fair cash value thereof. These defendants further answering say that they have no knowledge or information, save as by said bill, as to what the members of the State Board of Equalization believed was the rate upon which the local

assessors throughout the State had based their findings of assessed or full valuation for the year 1900, and neither admit nor deny the same. And these defendants deny that in making said assessment for the year 1900 there ought to have been any reduction from the valuation as ascertained by said State Board, and deny that in no case ought such assessment to have exceeded the sum of $542,687.; and deny that the members of said State Board did not exercise their own judgment and discretion in equalizing the valuation of complainant's capital stock and franchise for the year 1900 with the equalized assessment of other taxable property in the State of Illinois for said year, and deny that the members of said State Board were
44 coerced or considered themselves to be coerced by said writ of said Sangamon County Circuit Court, or that they were acting or considered themselves to be acting under specific instructions, or that they were debarred from the exercise of their independent judgment and discretion.

9. These defendants admit that the assessments as made by the said State Board were certified to the proper officers, as required by law, and that the County Clerk has made an extension of taxes against said assessment, and has certified and delivered to the defendant, Maurice Fitzgerald, warrants for the collection of the same, and has added thereto interest, as required by the law of the State of Illinois, substantially as in the said bill of complaint on pages 24 and 25 alleged.

10. These defendants deny that said capital stock assessment for the year 1900 is illegal, unequal, wrongful, or in violation of the constitution of the United States or the constitution of the State of Illinois; and deny that the making of said new assessment for the year 1900, and the collection of the taxes extended thereon constitute an attempt to take complainant's property without due process of law, and are in violation of any of the provisions of the constitution of the United States or of the State of Illinois; and deny that complainant is thereby denied the equal protection of the laws guaranteed by the constitution of the United States. And these defendants further answering deny that the assessment of complainant's property as compared with the assessment of the properties of oth-r corporations of the State of Illinois, has deprived complainant of the equal protection of the laws in violation of the constitution of the United States; and deny that complainant is subjected to excessive and disproportionate taxation.

11. These defendants further answering deny that com-
45 plainant is entitled to any of the relief asked in par. 11 of its bill of complaint; and deny that the payment of taxes by the complainant on the alleged first assessment for the year 1900 and the collection of interest would deprive complainant of its property without due process, and would deny complainant the equal protection of the laws in violation of any of the provisions of the constitution of the United States.

12. These defendants further answering admit that the collector's warrants for the collection of said taxes are now in the hands of the defendant Maurice Fitzgerald for execution, and under the laws of

the State of Illinois it is the duty of said collector to enforce collection thereof by levy upon the personal property of the complainant.

And these defendants further answering say as to the allegations in said bill of complaint contained, not herein specifically answered, admitted or denied, these defendants neither admit nor deny the same, but call for strict proof thereof.

And these defendants further answering deny that the complainant is entitled to the relief or any part thereof in said bill of complant demanded, and they pray the same advantage of this answer as if they had pleaded or demurred to the same; and they pray to be dismissed with their reasonable costs and charges in this behalf sustained.

SAMUEL B. RAYMOND,
County Treasurer and ex-officio County Collector of Cook County, and
MAURICE FITZGERALD,
Coll'r of the Town of South Chicago,
By EDWIN W. SIMS,
County Attorney,
FRANK L. SHEPARD,
Ass't Co. Att'y,
WILLIAM F. STRUCKMANN,
Ass't Co. Att'y, Their Solicitors.

EDWIN W. SIMS,
County Attorney,
FRANK L. SHEPARD,
Ass't Co. Att'y,
WILLIAM F. STRUCKMANN,
Ass't Co. Att'y, Solicitors for said Defendant-.

(Endorsed:) Filed Jun- 28, 1902. Marshall E. Sampsell, Clerk.

46 & 47 And on to-wit: the ninth day of June, 1902, there was filed in the clerk's office of said Court in said entitled cause a certain Master's Report and Testimony in the words and figures following to-wit:

48 *Master's Report & Testimony.*

UNITED STATES OF AMERICA,
Northern District of Illinois, Northern Division, ss:

In the Circuit Court of the United States, Northern District of Illinois, Northern Division.

In Chancery. No. 26177.

CHICAGO TELEPHONE COMPANY
vs.
MAURICE FITZGERALD ET AL.

Master's Report.

To the Honorable the Judges of said Court:

In obedience to an order of the Court entered in the above entitled cause on the 30th day of April, A. D. 1902, by which it was referred to the undersigned to ascertain and report upon the basis prescribed therein the additional amount of taxes for the year 1900 which should be paid by the complainant I have been attended from time to time by the solicitors for the different parties; and there was introduced before me testimony which is herewith returned.

Upon an examination of this testimony and the exhibits offered in connection therewith, and after hearing the suggestions of counsel at length, I find and report

That the amount of additional taxes to be paid by the complainant herein, as aforesaid, is the sum of Seven thousand
49 two hundred and sixteen dollars and ninety-five cents ($7,216.95).

This amount is arrived at by the computation and figures appearing in Exhibit B to the testimony herewith returned, and which I find to be supported by said testimony.

Other computations, upon which the contentions of defendants' counsel are based, have been furnished me and I have carefully examined and considered them and heard the suggestions of counsel in support of them, but in arriving at the conclusion heretofore stated, I have not adopted such computations because under said order of reference they are not, in my opinion, supported by the testimony.

All of which is respectfully submitted.

____ ____,
Master in Chancery of the Circuit Court of the United States, Northern District of Illinois.

Dated June 7, A. D. 1902.

I concur in the conclusions reached in the foregoing report.

____ ____,
Master in Chancery of the Circuit Court of the United States, Southern District of Illinois.

50 UNITED STATES OF AMERICA,
Northern District of Illinois, Northern Division, ss:

In the Circuit Court of the United States, Northern District of Illinois, Northern Division.

In Chancery. No. 26177.

CHICAGO TELEPHONE COMPANY
vs.
MAURICE FITZGERALD ET AL.

Testimony taken before Henry W. Bishop, Master in Chancery, on Wednesday, April 30, A. D. 1902, at 2:30 o'clock in the afternoon.

Present:—Arthur D. Wheeler, Esq., representing Holt, Wheeler & Sidney, Solicitors for complainant. Frank L. Shepard, Esq., on behalf of the defendants.

CHARLES E. MOSLEY, called as a witness on behalf of the complainant, being first duly sworn, was examined in chief by Mr. Wheeler and testified as follows:—

Q. Please state your name, residence and occupation.
A. Charles E. Mosley, Chicago, secretary and treasurer of the Chicago Telephone Company.
51 Q. How long have you been connected with the company in those capacities?
A. Since April, 1893.
Q. What was the capital stock of that company April 1, 1900?
A. $5,000,000.00.
Q. If this capital stock was increased during the year, when were the increases made and what were the amounts?
A. It was increased $2,000,000.00; it was increased $1,496,800.00 along in April, the end of April; and in October, I think about the first of October $503,200.00, making the total of $2,000,000.00.
Q. What then was the capital stock at the end of the year 1900?
A. $7,000,000.00.
Q. What dividend was paid upon the capital stock outstanding from time to time during the year?
A. Twelve per cent. was paid on the outstanding stock at the time of the payment of dividends.
Q. I will ask you, Mr. Mosley, to look at this statement and tell us who made it and what you know of its accuracy.
A. It is a statement prepared by myself on the basis of the books of the company, showing gross revenue and gross expenses and depreciation, earnings——

Mr. WHEELER: The statement will speak for itself in those respects, I want to ask you as to certain items, for instance.

Q. What is meant by "earnings from investment after April"? Please explain that.

52 A. The earnings on the increased capital.

Q. And that was ascertained on what basis?

A. Ascertained on the basis of the earnings of the entire plant for the year at twelve per cent.; that would be a little over one per cent. a month, one and four one hundredths per cent. a month.

Q. Now, the next item what does that represent?

A. The real estate?

Q. Yes.

A. That was $23,000.00 which was credited to real estate to represent the occupancy by the company of the real estate. It was not money actually earned, it was on—supposed to be what the property would produce if rented.

Q. It is the company's own real estate?

A. It is the company's own real estate, it was so much.

Mr. SHEPARD: You charge yourself with the occupancy of your own real estate?

The WITNESS: Yes, and credit that much to real estate on account of occupancy.

Q. As I inderstand you then, Mr. Mosley, that is what might be called a bookkeeping entry and does not represent a cash earning that came in to the treasury of the company from any outside source?

A. No, sir, it does not.

Q. Who made the further calculations indicated by that statement?

A. I made those myself.

Q. Are they correct?

A. I believe they are correct, yes, sir, as close to it as I could get.

53 Mr. SHEPARD: What is your fiscal year?

The WITNESS: It ends the 31st day of December.

Q. Identical with the calendar year?

A. Yes sir.

Mr. WHEELER: I offer this statement identified by the witness and ask that it be marked Complainant's Exhibit A.

(Said statement marked Complainant's Exhibit A and is hereunto annexed.)

Q. In what counties and states has the company property?

A. I think eight counties in this state.

Q. Name them please.

A. Cook, Lake, McHenry, Du Page, Kane, Will, Grundy and De Kalb. And Lake and Porter Counties, Indiana.

Q. Upon Complainant's Exhibit A an item appears "Assessed value outside of Illinois." Where was that assessed and where did you get that figure?

A. That was assessed in the State of Indiana.

Cross-examination.

By Mr. SHEPARD:

Q. Will you tell me how much your aggregate dividend payment was? You said it was twelve per cent.

A. It would of course have to vary from time to time; it was paid on $5,000,000.00 up to April and after April paid on $6,496,800.00, and then after April they paid on—we did not pay it in April, it was not issued in time for the April dividend but they did in October.

54

Q. Have you the aggregate amount?

A. No, I can give that to you later, it was twelve per cent.

Q. What surplus, if any, did you carry over from 1900 to 1901?

A. You mean for the year?

Q. Yes, at the end of your fiscal year, how much surplus did you show carried over?

A. Somewhere I think about $115,000.00 or $120,000.00, I am not sure of that amount.

Q. Does your surplus and your aggregate dividend payment correspond as shown here with net receipts for that year?

A. Yes, sir, they correspond with that.

Q. Your dividend payments and your surplus would, according to your method of bookkeeping and keeping of accounts of your company, evidence the amount of your net earnings for that year, wouldn't it?

A. It would if you do not take into account the depreciation. Of course the depreciation is a very important factor. Our ordinance of course expires in a few years now.

Q. Disregarding that for the year now, simply limiting the consideration to the one year, to that question, your net earnings and your surplus would evidence the amount,—or your dividend and surplus would evidence the amount of your net earnings for that year, disregarding depreciation of property and the future of the property?

A. Disregarding that, yes.

55

Q. Mr. Mosley, your issue of $2,000,000.00 additional stock in 1900, was that stock paid for in 1900?

A. Yes, I think it was.

Q. Was that stock issued as a dividend payment, or was it issued as sold and paid for?

A. Part of it was a dividend; it represented money and surplus that was paid, put into the plant. The stock was issued for money put into the plant, the stock dividend, the other was paid in cash.

Q. How much of it was a stock dividend?

A. It was half of it.

Q. Half of it, $1,000,000.00?

A. Yes.

Q. And the balance was paid for by the subscribers of the stock?

A. Yes, sir.

Q. Your item here of $3,129,238.18 under the designation of "Gross revenue, 1900" does that comprehend every receipt and source of revenue your company had that entire year?

A. All, yes, sir, and really more, as I explained; every dollar that it received was included in that item. That is outside of the stock of course.

Q. This real estate was owned by the company, was it?

A. Yes, sir, that was all owned by the company.

Q. You simply charged yourself with the usual rental value of the real estate?

A. Yes, it was credited to this real estate.

Q. Credited to this account?

A. Yes, sir, it is in that gross revenue.

56 Q. Your gross expenses, what does that comprehend, Mr. Mosley?

A. Maintenance, operating and general expenses of all kinds, and taxes and all those things.

Q. Are there any extensions or new construction or betterment included in that item of gross expenses?

A. No sir.

Q. No extensions of new lines, or building new lines, or extensions of old lines?

A. Not to my knowledge.

Q. Do you own this property in Indiana?

A. Yes sir.

Q. Which you say was assessed $43,620.00?

A. Yes sir.

Q. This item of $994,630.00 which was designated as "equalized value of tangible property," what do you mean by that, Mr. Mosley?

A. That is the amount of money upon which we paid the taxes, which is supposed to be one-fifth of the amount the property was valued at; that is the one-fifth of the amount, that is the money we actually paid in to the State of Illinois on $994,630.00, one-fifth.

Q. As assessed by the various local assessors in the various places?

A. That was equalized by the Board of Assessors.

Q. That is based upon the assessments of the local assessors?

A. Yes, sir.

Q. Throughout the various taxing districts?

A. Yes, sir, in Illinois.

Q. Was that property scattered throughout those counties you spoke of?

57 A. Yes, sir; principally in the City of Chicago of course.

Q. Have you there the description of the property and locations of it on these several sheets of paper here?

A. I have got some on one sheet; that was prepared for another purpose; I investigated that in making up.

Q. But this amount $994,630.00 is the assessed value of your tangible property by the local assessors?
A. Yes sir.
Q. What is this item of $175,000.00?
A. That is the amount upon which we are taxed on our franchise; that is our franchise tax outside of this other amount and upon which we paid, that is one-fifth.
Q. Assessed in 1900?
A. Yes, sir.
Q. Is that the State Board of Equalization's first assessment?
A. Yes, that is the State Board of Equalization's first assessment on which we paid.
Q. Treating this as the second or re-assessment?
A. Yes, sir, the first assessment, yes, sir.
Q. Mr. Mosley, you say in this item of "Gross Expenses" there are included no expenditures for extension of your property or plant, or betterment of your property. Do you keep an account for new construction outside of your gross expense account?
A. Yes, sir; our Construction Account is entirely separate.
Q. So that in this item that you have deducted from your gross income there is no other expenditure included, or nothing included for expenditure for new construction or new property of any
58 kind or nature?
A. Not to my knowledge, not any.

wit:

Redirect examination.

By Mr. WHEELER:

Q. Mr. Mosley, you stated that in the heading "Gross Expenses" taxes paid were included. What was the amount of the taxes paid in 1900?
A. Paid $84,986.05 and in addition to that we paid the City of Chicago under our ordinance $59,437.96, making $144,424.01 paid for the year 1900.

Mr. WHEELER: I think that is all now.
Signature waived by agreement of counsel.

ANGUS S. HIBBARD, called as a witness on behalf of the complainant, being first duly sworn, was examined in chief by Mr. Wheeler and testified as follows:

Q. State your name, residence and occupation.
A. Angus S. Hibbard, Chicago. I am general manager of the Chicago Telephone Company.
Q. How long have you been connected with that company?
A. A little over nine years.
Q. How long have you been engaged in the telephone business?
A. A little over 23 years—22 years or 23 years.
Q. With that departments, if any, have you been particularly familiar in that business?
A. I have been especially occupied with the construction, oper-

ation and maintenance of telephone lines and exchanges and
59 places of that kind.

Q. When was the art of telephony put into commercial operation, Mr. Hibbard?

A. In a small way, in 1878 and '79.

Q. Has experience led you to the adoption of any generally recognized rates of depreciation upon different forms of telephone property, and if so, state to us what some of them are.

A. During the first years of the business, the first ten years, perhaps more, these rates were very high and very uncertain; in the later practice, very large exchanges, large investments have been made in the underground work, subways and underground cables, and it is thought that we know more about these rates, although even in those things the business has not been carried on long enough to determine that finally, but certain rates within reasonable bounds have been thought to be fair upon a comparison of the expenses of various companies in the country operating lines of this kind. As to two extremes, we representing our plant, we put into our plant underground structures such as the conduits, that is a very expensive portion of the plant, of which the depreciation is the smallest, is probably so, and at the other end we have the overhead wire lines which are absolutely necessary in the business.

Q. The question included some of these depreciation rates; just state them.

A. We have put down the depreciation of underground conduits annually at the rate of two per cent., estimating that the main lines of a conduit will last for fifty years, of course they never have,
60 we have only had such main lines of conduit I think for ten years, perhaps twelve on the outside. The lateral lines of conduit, on the other hand, we put at ten per cent. They are the side lines leading to certain definite places, buildings, and other lines which are subject to removal any time as the business changes, in consequence. Then we have underground cables in our main lines which we put at 3.6 per cent. On the other hand on aerial lines of cable, that is a cable which is hung up into the air on poles, the depreciation is nine per cent., and on aerial wire line twelve. That assumes that a line of aerial wire in a telephone exchange will last about eight years but that is probably a very low estimate. As affecting that one item in my own experience with this particular company, on account of the smoke in the Chicago atmosphere and winds and other qualities over which we have no control, we had to replace the entire aerial line, it had to be changed, have done that once since I have been here and may have to do it again.

Q. That is once within how many years?

A. That was done about eight years ago.

Q. What rate of depreciation would that have represented?

A. I think that would have represented nearly twenty per cent., fifteen to twenty of that wire, much of it had only been up three years. On the instruments the rate has been put at ten per cent. especially with the more modern appliances which we believe are

going to last longer and do better work. In the apparatus
61 used in this company when I came here, in that item we had about 9,000 sets of telephones at that time, all of which have been entirely displaced, and I think the replacement was made between 1893 and 1899. Other forms of operating have been invented and it made necessary a replacement of every telephone in the city, a rebuilding and replacement.

Q. Then do you include changes necessitated by invention as a factor to be taken into consideration in estimating depreciation on the plant of the Telephone Company.

A. Yes.

Q. What is the rate upon lateral cables and switch boards?

A. That is estimated at 5 per cent: for lateral cables, a lateral cable being one which branches from the main line of cable into a terminal in a building, on a pole.

Q. Did you mention switch boards?

A. No, the operating appliances in our own offices, that is the switch boards of the modern type which we are now installing, the depreciation rate has been estimated upon them at eight per cent. Many of the best engineers in our business think that this is very low.

Q. Where is the plant of the Chicago Telephone Company distributed?

A. The territory of the company is the eight counties in Illinois and the two in Indiana, represented in exchanges in I think 110 cities and towns, and on pole lines along highways throughout the various counties.

Q. Have you then in the plant of this company the different forms of telephone construction required by large city ex-
62 changes, country toll lines, and small town exchanges and those in cities of medium size, from 10,000 to 25,000?

A. Yes.

Q. What, Mr. Hibbard, in your judgment, based upon your experience, would you consider a proper and conservative average rate of depreciation upon the plant as a whole, excluding of course the items of real estate, and of supplies in warehouses, for instance?

A. I should think from eight to ten per cent. on the entire plant.

Q. Is this or not irrespective of the length of time that the portion of your plant in Chicago now has a right to remain?

A. Yes, that would be taking the plant in good order as it would stand, and as it was represented by the apparatus and machinery in the plants; that is in good working order in every respect, as good as if it were new, as far as possible, I should say that those rates would hold.

Mr. WHEELER: Please read the question.

(Question read.)

Q. (Continuing:) Under the city ordinance?

A. This would be taking the plant of the company as if we contemplated going on indefinitely in our business.

Q. Do you know when the right to remain in Chicago does terminate?

A. Yes, I understand it is January, 1909.

No cross-examination by Mr. Shepard.
Signature waived by agreement of counsel.

63 CHARLES E. MOSLEY, recalled for further cross-examination by Mr. Shepard.

Q. Mr. Mosley, I may possibly have asked this question, I don't remember whether I have or not, this afternoon. Is the real estate of your Company improved or partly improved and part vacant? That is, are all of the lots, parcels and land owned by your company improved and used by your company, that is to say, were they in 1900?

A. Not all of them.

Q. Does your company own vacant real estate in Chicago, Cook County and elsewhere?

A. Yes, some that was bought for our company's business but has not yet been built upon.

Q. Was any considerable portion of your real estate still held in 1900 as unimproved and vacant?

A. Some of it. It was mostly in use, there was some that was not.

Q. Was there any other vacant property owned by your company in 1900 other than the vacant warehouse that you mentioned, and acquired and held for the purpose of extending your business?

A. No, property that I ever knew of being bought for business purposes.

Q. What proportion of your real estate was vacant in 1900?

A. A very small amount, I could not say.

Q. What percentage would you say, could you give an idea?

A. I do not know as I could give a guess at it without looking at the books, it was very small, very small; one way or another, our vacant property was occupied for storage; it was a very small
64 portion of it. There is a small lot on the West Side on 21st Street and that is perhaps *is* the only one that was not used for some purpose. Others were used for storage or some purpose.

Q. You have charged in this calculation the taxes paid on your real estate as against your earnings, which of course reduces your net earnings to that extent?

A. Yes.

Q. Vacant real estate not in immediate use or required for some other purpose than extending your line, the tax on that should not be deducted from the net income?

A. No property was bought that was not bought for telephone purposes, not a piece that was not bought to be used for telephone purposes, for use of the company.

Q. Not any bought for rent or for anything of that kind, for speculation, but for business?

A. No, it was all of it bought for business.

Q. You say the cost of putting in a new line or a new wire, extend-

ing your property either by extending the service from the wire on the street or carrying it to patrons, is charged to construction account and not included in this item of Gross Expenses?

A. All the work that is construction work is charged to construction account.

Q. None of that class of work, or anything of that grade, is included in this item of gross expenses?

Mr. SHEPARD: I think that is all.

Signature waived by agreement of counsel.

65 10:00 a. m., WEDNESDAY, *May* 14, 1902.

Parties met pursuant to notice.

Present: Mr. Wheeler; Mr. Shepard.

WILLIAM L. SOUTHWORTH, called as a witness on behalf of the defendant, being first duly sworn, was examined in chief by Mr. Shepard and testified as follows:—

Q. What is your name?

A. William L. Southworth.

Q. Where is your residence?

A. 536 Ogden Street, Chicago.

Q. Your occupation?

A. Clerk in the County Clerk's Office.

Q. How long have you been a clerk in the County Clerk's office?

A. Fifteen years.

A. The County Clerk of Cook County?

A. Yes, sir.

Q. Mr. Southworth, the principal place of business and office of the Chicago Telephone Company is in the Town of South Chicago, Cook County, Illinois, is it not?

A. It is assessed in Town of South Chicago and its general office is in the South Town.

Q. What was the rate by which taxes were extended for the Town of South Chicago for the year 1900?

A. At 8.36 7/10 in the Town of South Chicago.

Q. By what rate were the taxes extended by the County Clerk on the omitted assessment in the Town of South Chicago?

66 A. 7.87.

Q. On the one hundred dollars?

A. Yes.

Mr. SHEPARD: That is all.

Signature waived by agreement of counsel.

67 COMP. EX. A. H. W. B.

Chicago Telephone Co.

Telephone Building, 203 Washington St.

CHICAGO, ILLS., —— —, 189-.

Gross revenue, 1900		$3,129,238.18
Deductions to ascertain Net Earnings of April 1, 1900:		
Gross Expenses	$2,258,780.24	
For 6% depreciation	129,693.70	
Earnings from investment after April	140,233.60	
Real estate credits not actually earned	23,826.59	
Additional tax for 1900	12,000.00	2,564,534.13
True net earnings for 1900		564,704.05
		16.2/3
Full value		9,411,734.
Assessed value outside of Illinois		43,620.
		9,368,114.
Less 30% to equalize		2,810,434.
Divide by 5		6,557,680.
One-fifth		1,311,636.
Less actual equalized value Illinois, tangible property		994,630.
Net equalized capital stock		316.906.
Less amount capital stock on which tax has been paid		175,000.
		141,906.
Rate for 1900 taxation		.0787
Additional tax to be paid for 1900		11,168.00

68 10.00 a. m., SATURDAY, *May* 24, 1902.

Parties met pursuant to agreement.

Present: Mr. Meagher, Mr. Crawford, E. S. Smith, Assistant Attorney General, Mr. Shepard, Julius A. Johnson, Esq.

Mr. JOHNSON: We desire, if the court please, to offer some testimony this morning as to what was the appropriation, the amount

and the items of the appropriation made by the City of Chicago and other municipalities in the year 1900 on which this tax was extended. We desire to show and offer to show

First. Just what was the amount and what were the items of the appropriation bill passed by each municipality in the County that year on which this levy rests.

Then the levying ordinance.

Then we desire to introduce and offer to introduce the warrant or certified copy thereof made by the County Clerk for the collection of this tax of 1900.

This warrant was delivered to the County Treasurer, first to the Town Collectors and then to the County Treasurer or Collector for collection, and we shall offer and do offer to introduce the County Treasurer's books or a summary from the books of the County
69 Treasurer showing the exact amount of the tax from each municipality which was collected in that year, intending thereby to show that each of those municipalities had received already practically and fully more than the tax which they appropriated and levied; in some cases, they have been overpaid; in other cases they have been paid all except a trifling amount; and for that purpose

I first offer in evidence the appropriation ordinance of the City of Chicago making appropriations for its corporate purposes, and for school purposes, and for library purposes, for the year 1900. This ordinance will be found on page 2809 of the Council Proceedings. It was passed on the 4th day of April, 1900, and reads as follows:

Mr. SHEPARD: We object to the introduction in evidence of the ordinance just suggested and to all of the evidence that has been suggested by counsel for complainant for the purpose for which he has stated it was offered. That goes to questions simply as to whether or not this complainant should be compelled to pay any taxes upon the re-assessment of their prope-ty in view of the fact that they claim that the tax levied by the municipalities have been fully or partly met by the taxes paid by other property owners based upon the assessments made in 1900, for 1900.

We object to it in the first place because it is not within
70 the scope of the order of reference, your Honor.

In the second place, because it is immaterial to this hearing or to the final hearing in this case.

The first objection it seems to me should be sufficient for this stage of the proceedings, that is in this hearing on this preliminary matter. The order of reference reads; That the court finds that the complainant should pay an additional tax and it is ordered that this cause be referred to Henry W. Bishop, one of the Masters in Chancery of this court, for the purpose of ascertaining that preliminary payment. "Said Master is directed to ascertain and determine the amount of said additional taxes upon the following basis:" That I take to be the scope of the inquiry. "The full value of the complainant's capital stock and franchises on April 1st, 1900, shall be ascertained by capitalizing the true net earnings

of the complainant, in its fiscal year covering April 1, 1900, upon the ratio of basis of six per cent., that is to say, said full value shall be taken to be 16⅔ times said net earnings. This full value shall be equalized by deducting 30 per cent. therefrom, and one-fifth of said equalized value so ascertained shall be taken as the equalized value upon which complainant should have paid taxes for the year 1900, and upon said amount or equalized assessed value so
71 ascertained taxes at the true rate of 1900, of not to exceed 8.817 per cent. (exclusive of interest and penalties) shall be computed or extended, and from the amount of the taxes so ascertained shall be subtracted the taxes already paid by complainant for the year 1900," etc.

Mr. CRAWFORD: I submit that the most proper way to deal with this situation is to allow us to go on and make our formal proof and to allow that to be admitted subject to the objection and to let the whole matter go before the court so that the court can determine whether or not the evidence is admissible and relevant and material. It will take but a little while to prove these things.

MASTER ALLEN: Mr. Bishop and myself are agreed that the testimony offered for the purpose for which it is offered is incompetent and irrelevant under the orders in this case. We, however, do not desire to prevent counsel from having the record made of the evidence, but this is an intimation of our opinion and the effect it will have on our report. We do not anticipate that the defendants will make a cumbrous record, but that it will be merely a short one and, under the circumstances indicated, the evidence may be for the time admitted and a record made.

Mr. SHEPARD: If this testimony is to go in, we feel that we should introduce testimony as to the value of the stocks and bonds of this complainant, and that will prolong this hearing unnecessarily.

72 Mr. SMITH: I suppose it is understood that our objection goes to all the class of evidence Mr. Johnson stated he intended to offer, under the ruling of the Master?

The MASTER: For the purpose for which it is offered.

Mr. JOHNSON: So you need not interpose further objection in order to maintain the objections.

The heading of this ordinance reads: "An ordinance Making Appropriations for Corporate, School and Public Library Purposes for the Fiscal Year from January 1, 1900, to December 31, 1900.

Be it ordained by the City Council of the City of Chicago:

SECTION 1. That the following sums, or so much thereof as may be authorized by law and as may be needed, be and the same are hereby appropriated for corporate purposes of the City of Chicago, and for school and also for library purposes, as herein specified, for the fiscal year commencing January 1, 1900, and ending December 31, 1900:"

Then follow the various appropriations making a total for corporate purposes, the amount appropriated for taxes, $6,693,251.60.

Following that there is one subdivision headed "Interest Ac-

count," and those items, there are four or five of them which necessarily will be added to make the total amount for corporate purposes, they are as follows:

73	For payment of interest in city indebtedness..	$900,000.00
	Add 4½ per cent for loss in collection of tax..	40,500.00
General Sinking Fund.....		150,000.00
Add 4½ per cent. for loss in collection of tax.....		6,750.00
River improvement sinking fund.....		60,000.00
Add 4½ per cent for loss in collection of tax.....		2,700.00
School sinking fund.....		50,000.00
Add 4½ per cent. for loss in collection of tax.....		2,250.00
Sewerage sinking fund.....		104,000.00
Add 4½ per cent. for loss in collection of tax.....		4,680.00

Then under the heading of "The Chicago Public Library" the total appropriation is $263,397.00.

The- follows the amount of school taxes, and that is as follows:

New buildings and sites.....	$2,500,000	
Parental School buildings.....	200,000.00	
Add loss and cost of collection...	160,000.00	
Making a total of.....		$2,860,000.00

for building purposes.

Then under the heading "Educational purposes,"

Educational purposes.....	$7,455,000.00	
Add loss and cost of collection...	445,000.00	
	7,900,000.00	
Estimated revenue from other sources	750,000.00	
Making a total of.....		$7,150,000.00

74 Indebtedness.

Bonds maturing in 1900.....	$59,500.00
Interest due in 1900.....	32,800.00
Bonds maturing in 1901.....	36,800.00
Interest due in 1901.....	29,200.00
	$158,300.00
Add loss and cost of collection.....	7,700.00
Due in settlement with Trustees of that portion of Austin un-annexed on division of property, as per report to be made to City Council.....	29,206.44
Add loss and cost of collection.....	1,460.32
Making Total school tax appropriation....	$10,206,666.76

I also offer in evidence the following ordinance passed by the City Council of the City of Chicago on the 8th day of October, 1900, and found on page 1158 of the Council Reports:

"The following is the ordinance as passed:

Be it ordained by the City Council of the City of Chicago:

SECTION 1. That the following reductions be made in the ordinance making appropriations for corporate, school and public library purposes for the fiscal year from January 1, 1900, to December 31, 1900, and passed April 4, 1900 and that the heads of departments shall furnish to the City Comptroller at the earliest possible moment the details of the following amounts, showing the specific items to be reduced:" "From Fund for Corporate Purposes" a total
75 of $1,647,500.00. "This ordinance shall be in force from and after its passage."

I also offer in evidence the levying ordinance of the City of Chicago for the year 1900, found on page 49 of City Council Proceedings, passed on the 23rd day of April, 1900, reciting "That the following sums, or so much thereof as may be authorized by law and as may be needed, be and the same are hereby appropriated for corporate purposes of the City of Chicago, and for school and also for library purposes, as hereinafter specified, for the fiscal year commencing January 1, 1900, and ending December 31, 1900."

I will not repeat the items, they are the same as in the appropriation ordinance of April 4.

I now offer in evidence the appropriation ordinance passed for the year 1900 by the County of Cook at its meeting on January 23, 1900, and found on page 157 of its official records for the year 1899-1900, the last clause of which reads as follows: "Total amount to be appropriated." and under that, "Total to be realized by taxation as per resolution $2,481,348.44."

I offer in evidence a certified copy of the tax levy for the year 1900 of the South Park Commissioners in and by which they levied the sum of $611,056.00.

(Said certified copy is in words and figures as follows, to wit:)

76 An Ordinance Concerning the Tax Levy for the Current Year.

Be it ordained by the Couth Park Commissioners:

SECTION 1. That the South Park Commissioners hereby Specified the sum of Three hundred thousand ($300,000) dollars which this Board estimates as necessary for the payment of the interest on the bonds issued by this Board prior to June 26th, 1885, and for the payment of the principal of such said bonds as are required to be paid during the current year, and that which in addition thereto will be required for the improvement, Maintenance and government of the South Park during the current year.

SECTION 2. That the South Park Commissioners in addition to the sum mentioned in the preceding Section, hereby levied a tax of Forty thousand ($40,000) dollars upon the property within its jurisdiction to pay the interest as it falls due on the bonds issued under

and in pursuance of an "Act" entitled "An Act in Relation to the Worlds Columbian Exposition" approved August 5th, 1890, and also to pay and discharge that portion of the principal of said bonds required to be paid during the current year, and direct the same to be collected in the manner provided for in the Collection of other park taxes.

SECTION 3. That the South Park Commissioners in addition to the sum mentioned in the preceding sections, hereby levies
77 a tax of Three hundred eleven thousand and fifty six ($311,056,000) dollars upon the taxable property embraced in its park district under and in pursuance of an act entitled An Act to Enable Park Commissioners to Maintain and Govern Parks, Boulevards, Driveways, Promenades and Pleasure Grounds under their control. Approved April 21, 1899, and ordains and certifies that said amount in addition to the Sums mentioned in the preceding Sections, is necessary for the proper improvement governance and maintenance of the Park property under its control.

SECTION 4. That the sum of Six hundred and fifty one thousand and fifty six ($651,056) dollars Specified to be collected as taxes for the current year be, and the same is hereby levied and assessed upon the taxable property of the Town of South Chicago, Hyde Park and Lake, in the County of Cook and State of Illinois, according to the Valuation of the same as made for the purpose of State and County taxations.

SECTION 5. That the South Park Commissioners hereby certifies to the County Clerk of said County the several amounts above specified aggregating six hundred fifty one thousand and fifty six ($651,056) dollars, and the said County Clerk is required to apportion and extend the said sum of Six hundred fifty one thousand and fifty six ($651,056) dollars upon the taxable property
78 in the Towns of South Chicago, Hyde Park and Lake in said County of Cook in the next general tax warrants for the collection of the State and County taxes in said several towns in the manner provided by law.

SECTION 6. That the Secretary is hereby directed to transmit to the County Clerk of said Cook County on or before the second Tuesday of August, A. D. 1900, a copy of this ordinance duly certified by said secretary as the estimate and certificate required by law.

STATE OF ILLINOIS,
County of Cook, South Park Commissioners, ss:

I, Edward G. Shumway, Secretary of the South Park Commissioners and Custodian of its records and files, do certify that the foregoing is a true copy of an ordinance adopted by the South Park Commissioners on the 9th day of May, 1900.

In Testimony Whereof, I have hereunto set my hand and the seal of said South Park Commissioners this Seventh day of June A. D. 1900.

[SEAL.] EDWARD G. SHUMWAY,
Secretary of the South Park Commissioners.

(Endorsed on the back as follows:)
Filed Jun- 14, 1900, Philip Knopf, County Clerk.

79 STATE OF ILLINOIS, *County of Cook, ss:*

I, Philip Knopf, Clerk of the County Court of Cook County, in the State aforesaid, do hereby certify that the attached statements are a true and correct copy of the Tax Levies for the South Park, West Park, West Chicago Bonded Indebtedness, Lincoln Park, North Chicago and Lincoln Park, Lake View for the year A. D. 1900, all of which appears from the records and files in my office.

In Witness Whereof, I have hereunto set my hand and affixed the seal of said County Court, at my office, in the City of Chicago, in said County, this 17th day of May A. D. 1902.

[SEAL.] PHILIP KNOPF,
Clerk of the County Court.

80 Mr. JOHNSON: I offer in evidence the resolution of the Town of West Chicago, dated the 27th day of July, 1900 levying the sum of $60,000.00 for its bonded debt.

I offer in evidence certified copy of the resolution of the supervisor of the Town of Lake View levying the sums of $60,000.00 for the improvement, maintenance and government of Lincoln Park for the year 1900. This ordinance is on October 11, 1900.

Another ordinance of the Town of North Chicago dated October 10th for levying the following items for the maintenance of Lincoln Park, They are as follows:

For the maintenance and improvement of the Park..	$152,250.00
For the payment of interest on the Lake Shore Protection bonds, the sum of.....	25,000.00
For sinking fund for the payment of said Lake Shore Protection bonds the sum of.....	25,000.00
For cost of collection, the sum of.....	1,000.00
For loss on collection the further sum of.....	2,000.00
For deficiency on former collections, losses, the further sum of	2,323.44

I also introduce in evidence an ordinance of the West Chicago Park Commissioners dated the 18th day of July, 1900, levying certain rates per cent. under various laws, all of which are set out in detail, amounting to 11½ mills on the property in the West Town of Chicago for that year.

(Said documents are in words and figures as follows, to-wit:)

81 To Philip Knopf, County Clerk of Cook County, Illinois.

We, the Corporate Authorities of the Town of West Chicago in the County of Cook and State of Illinois, do hereby certify to you that the following amount of money to be raised by taxation is required for the purpose of meeting the bonded indebtedness of the said Town of West Chicago for the ensuing year.

For West Chicago bonded indebtedness..... $60,000.00

In Witness Whereof we hereunto set our hands and caused the

Seal of said Town to be affixed hereto, this twenty-seventh day of July, 1900.

JOHN J. McLAUGHLIN,
Supervisor of the Town of West Chicago.
EDWARD B. WARWICK,
Clerk of the Town of West Chicago.
JOSEPH J. KLEIN,
[SEAL.] *Assessor of the Town of West Chicago.*

(Endorsed on the back as follows:)
Filed Dec. 11, 1900, Philip Knopf, County Clerk.

82 TOWN OF LAKE VIEW, *October* 11, 1900.

I, Henry Best, Supervisor of the Town of Lake View in the County of Cook and State of Illinois, pursuant to law, do hereby certify that the amount of money to be raised by taxation on property in said Town of Lake View in said County and State, on the assessment for 1900, for the purpose of paying any debt contracted by the Commissioner of Lincoln Park which may fall due during the next year and for the improvement, maintenance and government of said part during the next succeeding year, agreeable to an act of the General Assembly of the State of Illinois Entitled "An Act to fix the boundaries of Lincoln Park and provide for its improvement" approved April 19, 1869, and Amendments thereto, is Sixty thousand ($60,000.00) dollars.

HENRY BEST,
Supervisor Town of Lake View.

I concur in the above levy.

STEPHEN A. BERTRAND,
Supervisor Town of North Chicago.

(Endorsed on the back as follows:)
Filed October 10th, 1900, Philip Knopf, County Clerk.

82½ TOWN OF NORTH CHICAGO, *October* 10, 1900.

I, Vincent H. Perkins, Supervisor of the Town of North Chicago in the County of Cook and State of Illinois, pursuant to law, do hereby certify that the amount of money to be raised by taxation on property in said Town of North Chicago in said County and State, on the assessment for 1900, for the purpose of paying any debt contracted by the Commissioners of Lincoln Park, which may fall due during the next year and for the improvement, maintenance and government of said Park during the next succeeding year agreeable to an act of the General Assembly of the State of Illinois, entitled An Act to fix the boundaries of Lincoln Park and provide for its improvement." "Approved April 19, 1869, and Amendments thereto, is One hundred and Fifty two thousand two hundred and fifty ($152,250.00) dollars.

And I further certify that a further sum of Twenty five thousand dollars ($25,000.00) is to be raised on said property in said Town,

in said County and State for the payment of interest on Shore Protection Bonds.

And I further certify that a further sum of Twenty five thousand dollars ($25,000.00) is to be raised on said property in said Town in said County and State for a Sinking Fund for the payment of said Shore Protection Bonds.

83 And I further certify that a further sum of One thousand dollars ($1000.00) shall be raised on said property, in said Town in said County and State for cost of Collection, and a further sum of Two thousand dollars ($2,000.00) for loss on Collection and a further sum of Two thousand three hundred and twenty three dollars and forty four cents ($2,323.44) for deficiency on former Collection loss.

VINCENT H. PERKINS,
Supervisor Town of North Chicago.

(Endorsed on the back as follows:)
Filed October 10th A. D 1900, Philip Knopf, County Clerk.

Whereas, it is necessary that all the taxes now allowed by law for the purpose of governing, maintaining and improving the parks and boulevards now under the control and management of the West Chicago Park Commissioners, and also for the purpose of paying all other necessary and incidental expenses incurred and to be incurred by said Commissioners in and about the same during the *nexed* succeeding year, be levied; therefore, be it

Resolved by the West Chicago Park Commissioners, That there should be duly levied by the proper authorities, lawfully constituted for that purpose, and under the Acts of the General Assembly
84 of the State of Illinois, particularly mentioned in the certificate hereto attached and marked Exhibit "A," a tax of 11½ mills on each dollar's worth of property in the Town of West Chicago, according to the valuation of such property, as made for the purpose of State and County Taxes, for the purpose of enabling said West Chicago Park Commissioners to pay for the government maintenance and improvement of the several parks and boulevards now under the control and management of such Park Commissioners, and for the purpose of enabling said Park Commissioners to pay all other necessary and incidental expenses incurred, and to be incurred in and about and incident to the government, maintenance, management and control of the several parks and boulevards now under the management and control *of the several parks and boulevards now under the management and control* of said Park Commissioners, and also for paying the interest on all bonds and other indebtedness heretofore lawfully incurred and hereafter to be lawfully incurred by said Park Commissioners pursuant to the laws now in force in this state.

Resolved, Further by the West Chicago Park Commissioners, That the President and Secretary thereof immediately transmit to the Assessor, Supervisor and Clerk of the Town of West Chicago and to

the County Clerk of Cook County, under the seal of this
85 Board, a copy of the foregoing resolutions and the certificate thereto attached.

EXHIBIT "A."

Certificate.

The West Chicago Park Commissioners hereby certify That the several Acts of the General Assembly authorizing the tax estimate by the West Chicago Park Commissioners necessary to be levied for the next ensuing year upon each dollar's worth of the property subject to taxation in the Town of West Chicago, according to the valuation thereof for taxation for State and County purposes, are as follows, namely:

First. ½ mill—"An Act to amend the charter of the City of Chicago, to create a Board of Park Commissioners and authorize a tax in the Town of West Chicago, and for other purposes," approved and in force February 27, 1869.

Second. 2½ mills—Also "An Act in regard to the completion, improvement and management of public parks and boulevards and to provide a more efficient remedy for the collection of delinquent assessments" approved May 2, 1873, and amended by an Act approved May 31, 1879 and in force July 1, 1879.

Third. 1 mill—Also "An Act to enable Park Commissioners to improve, govern and maintain the parks and Boulevards under their control," approved June 6, 1885, and in force July 1, 1885.

86 Fourth. 1½ mills—Also "An Act to authorize the corporate authorities of towns to issue bonds for the completion and improvement of public parks and boulevards, and to provide a tax for the payment of the same," approved June 12, 1891, and in force July 1, 1891.

Fifth. 1 mill—Also "An Act to enable Park Commissioners to maintain and govern parks and boulevards under their control "approved June 17, 1893, and in force July 1, 1893.

Sixth. 1½ mill—Also "An Act to authorize the corporate authorities of towns to issue bonds for the completion and improvement of parks and boulevards, and to provide a tax for the payment of the same," approved June 21, 1895, and in force July 1, 1895.

Seventh. 2 mills—Also "An Act to enable Park Commissioners to maintain and govern the parks and boulevards under their control" approved June 17, 1895, and in force July 1, 1895.

Eighth. 1½ mills—Also "An Act to authorize the corporate authorities of towns to issue bonds for the completion and improvement of public parks and boulevards and to provide a tax for the payment of the same," approved June 9, 1897, and in force July 1, 1897.

On motion of Commissioner Pavlicek seconded by Commissioner Kopf, that the foregoing resolution be adopted the ayes and
87 noes were called as follows:

Commissioner	Kopf	aye.
"	Lichtenberger	aye.
"	Norden	aye.
"	Pavlicek	aye.
President	Suddard	aye.

5 votes aye; declared carried.
Absent—Commissioners Bloxet and Graham.
Approved,

J. W. SUDDARD, *President.*

STATE OF ILLINOIS, *County of Cook, ss:*

I, Ernest G. Schubert Secretary for the West Chicago Park Commissioners, do hereby certify that the above and foregoing is a true and correct copy of a resolution adopted by the Board of West Chicago Park Commissioners at an adjourned regular meeting, held Wednesday, July 18, 1900.

In Witness Whereof, I hereunto subscribe my name and affix the Corporate Seal of said West Chicago Park Commissioners this the 20th day of July A. D. 1900.

E. G. SCHUBERT, *Secretary.*

Filed July 28, 1900.
PHILIP KNOPF,
County Clerk.

88 STATE OF ILLINOIS, *County of Cook, ss:*

I, Philip Knopf, Clerk of the County Court of Cook County, in the State aforesaid, do hereby certify that the attached statements are a true and correct copy of the Tax Levies for the South Park, West Park, West Chicago Bonded Indebtedness, Lincoln Park, North Chicago and Lincoln Park, Lake View for the year A. D. 1900, all of which appears from the records and files in my office.

In Witness Whereof, I have hereunto set my hand and affixed the seal of said County Court, at my office, in the City of Chicago, in said County, this 17th day of May A. D. 1902.

PHILIP KNOPF,
Clerk of the County Court.

89 WILLIAM R. BURCKY called as a witness on behalf of the complainant, being first duly sworn, was examined in chief by Mr. Johnson and testified as follows:

Q. Please state your name, residence and occupation.

A. William R. Burcky, Chicago, bookkeeper in the County Treasurer's Office.

Q. How long have you been employed in the County Treasurer's office.

A. About twenty years.

Q. Mr. Burcky, have you made up from the County Treasurer's books for the year 1900 a statement of the total amounts extended

on the warrants for each year and the total amounts collected under each warrant for each municipality, and a statement showing the amount uncollected in favor of each municipality from the general tax levy of that year?

A. I have the tax warrant of the 1900 tax, yes, sir.

Q. If you have made up from the County Treasurer's books and brought with you such a statement, you may produce the same. First, I will ask you to state what the amount of taxes is, extended on the warrant for the year 1900 in favor of the City of Chicago?

Mr. SHEPARD: That is objected to as incompetent and immaterial for the reasons already stated.

Q. Mr. Bureky, I will ask you if you have prepared in convenient form a statement of the amount of State, County,
90 Chicago City, Chicago School, Chicago Library, South Park, Lincoln Park, Lake Shore Protection Fund, West Park, Boulevard and Park, and Sanitary District taxes extended on such warrants, and the amounts uncollected?

A. Yes, sir.

Mr. JOHNSON: Now, I offer to prove that the books show the following; and I also offer in evidence the statement prepared by Mr. Bureky, as follows:

	Amount on warrant for the year 1900.	Uncollected amounts.	Amount collected by town and county collectors.
State Tax.....	$1,552,346.12	53,302.22	1,499,043.90
County Tax	2,456,064.89	83,807.89	2,372,257.00
Chicago City Tax.....	6,953,716.00	262.160 60	6,691,555.40
Chicago School Tax....	10,026,965 82	333,175.73	9,693,790.09
Chicago Library Tax...	271,308.00	9,764.71	261,543.29
South Park Tax..... .	662,187 01	23,498.82	638,688.19
Lincoln Park Tax.....	223,049.69	7,773.86	214,275.83
Lake Shore Pro. Fund Tax.	51,097.22	1,922.08	49,175.14
West Park Tax.....	641,687.87	13,176.47	628,511.40
Boulevard & Park Tax.....	29,833.43	665.82	29,167.61
Sanitary District Tax..	1,374,047.88	59,562.67	1,314,485.21
Total.....	$24,242,303.93	$849,810.87	$23,392,493.06

91 Mr. JOHNSON: I offer to prove by a certified copy of the objection of the Title Guaranty & Trust Company, a taxpayer of the City of Chicago, made in the County Court of Cook County, in the matter of the application of Samuel B. Raymond, County Treasurer and *ex-officio* County Collector of Cook County, Illinois, for judgment of sale for delinquent taxes for the year 1900 and prior years, with the judgment of the court thereon, and invalidity of 13.05 per cent. of the corporate tax of said City for said year.

Mr. SMITH: I think we should make a further specific objection to that, that it is not in the record in this case or between any parties to this case.

Mr. JOHNSON: Now, if it be understood that in addition to all the evidence having been excluded, I offer to prove the various ordinances and the testimony figured out on Mr. Burcky's slip which has been disallowed——

Mr. SHEPARD: If your Honors please, just to have this record straight, it may be all right now, I understand the ruling of the Masters to be that the evidence sought to be introduced here upon this subject matter this morning is excluded, and the objection to the introduction of that evidence is sustained?

The MASTER: In effect that is the ruling of the Masters.

92 Mr. SHEPARD: And their offer to prove these various things suggested is disallowed?

Mr. SMITH: As I understand, that is not exactly it, I understand Mr. Johnson has offered in evidence what he has read here; we object to it, and the Masters sustain the objection.

The MASTER: Yes, so far as he has offered in evidence, the objection is sustained, and in so far as he has offered to prove certain things his offer is also disallowed.

Mr. CRAWFORD: Now, I ask that the Master shall refer that question to the court or direct that the evidence, the offer be returned with their reports so that the equity that is before the Master, the proposition, and rejected may be presented to the court exactly as it was presented to the Master. In other words, we have the right to assume to ask the opinion of the court, and the Masters ought to include the evidence, not simply the objections to it; and if not, I shall ask the Masters to suspend this proceeding now and refer the matter to the court.

Mr. SHEPARD: I object to any such proceedings at this late day.

The MASTER: It will go to the court just as it has been offered.

Mr. JOHNSON: I would like to ask Mr. Burcky another

93 question.

WILLIAM R. BURCKY, Recalled For Further Examination By Mr. Johnson:

Q. Mr. Burcky, do these figures of the amount extended on the warrant for the year 1900 include any tax, any item except the revenue for that year?

A. They include whatever back taxes have been brought forward from other years, and that would be an amount in the levy.

Q. So the items of back taxes would be a comparatively small one in each case?

A. I think so.

Q. And in the levy you speak of, would there be any excess?

A. In making the extension upon so many different pieces, there would be of course a fractional amount.

Q. It arises from the extension of fractions?

A. Yes, sir.

Q. These amounts which you have on here under the head of

"Amount of Warrant for year 1900" those are the amounts which stand on the warrants themselves?

A. Including the back taxes brought forward.

Mr. JOHNSON: I also offer to prove by a certified copy from the County Clerk of Cook County that the exact amount of taxes on the warrant in favor of each municipality for the year 1900, not including back taxes, is as follows:

94 *Taxes Extended for* 1900.

	Dollars	Cts.
County	2,431,021	.95
City of Chicago	6,889,054	.40
Chicago School	9,986,580	.94
Chicago Public Library	268,291	.12
Sanitary District	1,347,566	.29
South Park	656,450	.68
Lincoln Park (Lake View)	60,270	.98
Lincoln Park (North Chicago)	160,037	.76
Lake Shore Protection Fund (No. Chic.)	50,853	.01
West Park	639,577	.27
Boulevard and Park	29,681	.81
Town Bonds	64,601	.34

STATE OF ILLINOIS, *County of Cook, ss:*

I, Philip Knopf, Clerk of the County Court of Cook County, in the State aforesaid, do hereby certify that the attached statement of the total amount of Taxes Extended on the General Warrants for the year A. D. 1900 for the several purposes mentioned is true and correct all of which appears from the records and files in my

95 office.

In Witness Whereof, I have hereunto set my hand and affixed the seal of said County Court, at my office in the City of Chicago, in said County, this 17th day of May, A. D. 1902.

(Signed) PHILIP KNOPF,

[SEAL.] *Clerk of the County Court.*

96 The MASTER: The intention of the Master was simply that counsel should offer to prove, and that that offer should be dealt with by the Master. There was a departure from that method of procedure so that you could get right along on both the offers to prove and the actual proof.

Mr. JOHNSON: The Master understands I offer to prove each one of these ordinances I have offered in evidence. Of course I don't want any of them left out on account of any misunderstanding.

The MASTER: They are all in.

Mr. CRAWFORD: We shall request the Master in his report to fully embrace the different items of evidence that were tendered and rejected, and also the offers to prove that were rejected. I think in order to get it into the record in proper shape there should be a formal offer to prove.

Mr. SHEPARD: I think the record shows you have both offered to prove and we have objected.

Mr. CRAWFORD: Not the whole detailed proposition which was rejected; I think we can get it in the record in proper shape.

Mr. SMITH: You might offer to prove a certain thing and when you offered your evidence it might prove an entirely different thing.

Mr. CRAWFORD: It might but it won't, so you might try us.

97 (Said certified copy of the objection of the Title Guarantee and Trust Company is in words and figures as follows to-wit:)

UNITED STATES OF AMERICA.

STATE OF ILLINOIS, *County of Cook, ss:*

Pleas before Honorable Richard S. Farrand, County Judge of Lee County, presiding as Judge of the County Court of Cook County at the request and in the absence of the Honorable Orrin N. Carter, sole presiding Judge of the County Court of Cook County, in the State of Illinois, at a regular term of said County Court of Cook County begun and holden at the Court House, in the City of Chicago, in said County and State, on the Second Monday, being the 8th day of July, in the year of our Lord one thousand nine hundred and one, and of the Independence of the United States of America the one hundred and twenty-sixth.

Present: The Honorable Richard S. Farrand, Acting Judge of the County Court of Cook County. Ernest J. Magerstadt, Sheriff of Cook County.

Attest:

PHILIP KNOP, *Clerk.*

Be it remembered that heretofore, to-wit: on the 10th day of July in the year of our Lord one thousand nine hundred and one the same being one of the days of the July Term of the

98 County Court of Cook County, the following objections were filed with the clerk of said Court in words and figures as follows to-wit:

STATE OF ILLINOIS, *County of Cook, ss:*

In the County Court Thereof.

Objection No. —.

In the Matter of the Application of SAMUEL B. RAYMOND, County Treasurer and *ex-officio* County Collector of Cook County, Illinois, for Judgment of Sale for Delinquent Taxes for the Year 1900 and Prior Years.

Now comes Title Guarantee & Trust Company who is the owner of, and interested in, the real property described in the Sche-ule

hereto attached and made part hereof, by J. D. Adair and Edwin S. Philpot, his attorneys and objects to the rendition of judgment as herein applied for against said premises, for the taxes levied thereon, for the said year, and for cause of objection alleges:

1. That the description of said premises as set forth in the judgment sale, redemption and forfeiture record, and the advertised delinquent list upon which this application for judgment of sale is made, is so defective as to render the assessment thereof, for the purpose of taxation for the year 1900, null and void.

99 2. That said description, as set forth, is so defective as to render the levy of the taxes extended against said premises for the year 1900 null and void.

3. The said description of said lands, as set forth in the judgment sale, redemption and forfeiture record aforesaid, is on this application insufficient to sustain a judgment of sale as applied for.

4. The said description of said land, as contained in the advertised list of delinquents is, on this application insufficient to sustain a judgment of sale as applied for.

5. A plat of said lands purporting to have been filed for record in the recorder's office of Cook County, Illinois, as document number — in Book 164 maps, page 27, entitled Subdivision by the Assessor of South Division of Chicago of Lots 7 & 8 and E. ½ Lot 6, B. 40, Original Town of Chicago is void in this

(*a*) It does not particularly describe and set forth the lots or parcels of land surveyed, as required by the statute then in force.

(*b*) The location of the lots into which said lots were subdivided is not set forth in said plat as required by the statute then in force.

(*c*) No description of the tract or tracts, lot or lots of land out of which said lots in said Assessor's plat were made is given in said plat, as required by the statute then in force.

(*d*) The quantity of land in each of the lots attempted to be made by said assessor, and particularly as to lots — is not given, as required by the statute then in force.

100 (*e*) The said plat was not certified by the County Surveyor, as required by the statute then in force.

(*f*) The said assessor was without legal authority to make said survey and plat because said plat does not show affirmatively that said assessor included in his survey and plat only parcels of land each of which embraced less than one-sixteenth of a section as required by the statute then in force.

(*g*) The said plat is in other respects illegal and insufficient as a platting of said lands for the purposes of taxation.

6. The property has no legal existence for the purposes of taxation.

7. No lien for taxes can attach as against said lands as there described, because they cannot be located and found.

8. The tax levy ordinance passed by the Common Council of the city of Chicago on the 23rd of April A. D. 1900, provides for the levying of taxes for corporate purposes, for the year 1900, in excess of two per cent. (exclusive of the amount levied for the payment of bonded indebtedness and interest thereon) upon the aggregate valuation of all the property within the city of Chicago, subject to taxa-

tion therein as the same was equalized for State and County taxes for the preceding year.

9. The County Clerk extended the taxes levied for corporate purposes of the City of Chicago for the year 1900 upon the premises herein objected for, at a rate in excess of two per cent. (exclusive of the amount levied for the payment of bonded indebtedness
101 and interest thereon), upon the aggregate valuation of all property within the City of Chicago subject to taxation therein as the same was equalized for State and County taxes for the preceding year.

10. The appropriations made by the Common Council by ordinance passed April 4, 1900, provide for the application of money to be raised under the tax levy ordinance aforesaid, to the payment of indebtedness incurred or to be incurred by the City of Chicago, in excess of five per cent. of the value of the taxable property in the City of Chicago, as ascertained by the last assessment for State and County purposes, and the taxes as levied upon the premises herein objected for were extended to include such indebtedness.

11. The Common Council by ordinance passed April 4th, 1900, appropriated money to the payment of indebtedness unlawfully incurred by the City of Chicago, for the payment of which indebtedness the City has levied, and the County Clerk extended a tax upon the premises herein objected for.

12. The appropriations by the City of Chicago by ordinance passed April 4, 1900, and the tax levy based thereon, are in respect to the appropriations of money to pay, and the levy of the tax to raise said money to pay said indebtedness so unlawfully incurred by said City illegally appropriated, and the said taxes are il-
102 legally levied upon the premises herein objected for.

13. The appropriations by the City of Chicago by ordinance passed April 4, 1900, and the tax levy based thereon, provide for the payment of unlawful indebtedness and the unlawful use of money, in this that the appropriations were made for unpaid bills of prior years, for money not to be applied to lawful corporate purposes, for money to pay interest in excess of the interest payable upon the lawful interest bearing indebtedness of the City of Chicago, and the tax to raise the money to pay said appropriations, was illegally levied upon the premises objected for.

14. The appropriations made by the Common Council of the City of Chicago by ordinance passed April 4th, 1900, and the tax levy based thereon, exceed the amount which could be lawfully appropriated and levied, upon the property subject to taxation in the City of Chicago, as the same was assessed and equalized for State and County purposes for the year 1900, and the said tax as levied upon the premises objected for is illegal and void.

15. The taxes levied upon the premises in question for the corporate purposes of the City of Chicago for the year 1900, are in other respects illegal and void.

16. The estimate of the amount of money required by School pur-

poses, for the year 1900, as passed and certified by the Board
102½ of Education of the City of Chicago, to the finance Committee of the Common Council of said City, is illegal and void.

17. The appropriation ordinance passed April 4th, 1900, by the Common Council of the City of Chicago, and the levy of the Tax to raise the money to pay said appropriations, are in respect to the appropriations for the School Tax Fund and the levy of the taxes therefor, illegal and void in this.

(*a*) The amount appropriated for building purposes, and the tax levied therefor, exceed two per cent., upon all the taxable property in the City of Chicago, as ascertained by the assessment for State and County taxes for the year 1900.

(*b*) The amount appropriated for educational purposes, and the tax levied therefor, exceed three per cent. upon all the taxable property in the City of Chicago, as ascertained by the assessment for State and County taxes for the year 1900.

(*c*) The amount appropriated for the School Sinking Fund, exceeds the amount necessary for said fund and lawfully authorized therefor.

(*d*) The appropriation for building purposes, contains items belonging to educational purposes, and the appropriation for educational purposes contains items for building purposes, and both are illegal and void, and the tax levied to pay the same is illegal and void.

18. The appropriations for school purposes for the year 1900, made by the Common Council of the City of Chicago is in other respects uncertain, illegal and void.

19. The appropriations by the Common Council by ordinance passed April 4th, 1900, for the general sinking fund, are
103 largely in excess of the amount required, and lawfully authorized by law, for that purpose.

20. The valuation of the objector's premises for taxation for the year 1900, is illegal and void.

21. The objector herein hereby offers to pay, not waiving his right to an appeal or writ of error, any part of the taxes aforesaid, which may be found by the Court to have been legally assessed and levied.

TITLE GUARANTEE & TRUST COMPANY,
By J. D. ADAIR &
E. S. PHILPOT,
Attorneys for Objector.

Schedule of Property Objected For.

Title Guarantee & Trust Company, Objector.

The South six (6) inches of the East one hundred and eleven and one half (-11½) feet of sub-lot two (2) and all of sub-lot three (3) in Assessor's Division of the East half of lot six (6) and all of

lots seven (7) and eight (8) in block forty (40), Original Town of Chicago.

104 And afterwards, to-wit: on the 7th day of August, A. D. 1901, the following among other proceedings were had by and before said Court and entered of record, to-wit:

STATE OF ILLINOIS, *County of Cook, ss:*

In the County Court Thereof.

In the Matter of the Application of S. B. RAYMOND, County Treasurer and *ex-Officio* Collector of Cook County, Illinois, for Judgment of Sale for Delinquent Taxes, &c., for 1900 and Prior Years.

General Taxes.

Objection No. 75.

On this day, being one of the days of the July Term, 1901, of this Court, the objections of Title Guarantee & Trust Co., to the application for judgment of sale for delinquent taxes for the year 1900 coming on to be heard, the Court after hearing the evidence and the arguments of counsel, and being fully advised in the premises, finds that the plat entitled:

"Subdivision by the Assessor of South Division of Chicago of lots 7 and 8 and east half of lot 6 Block 40 Original Town of Chicago," recorded Sept. 19, 1866, in Book 164 of Maps page 27, offered
105 in evidence herein does not comply with Sections 52 and 53 of the Act of Feb'y 12, 1853, nor does said plat comply with Sections 17, 18, 19, 20 and 24 of the Revised Statutes of 1845.

And the Court further finds from the evidence that the objector is estopped to deny the validity of said Assessor's Plat.

And the Court further finds, that the tax levy ordinance of the City of Chicago, passed April 23rd, 1900, as to the following items is invalid.

Contingent Fund.

For contingent and other expenses, for corporate purposes not otherwise hereinafter expressly provided for, including injury claims.....	$40,000.00

Contingent Fund, Finance Committee.

For payment of petty injury and damage claims, refunds and other contingent expenses ordered, by Finance Committee.....	5,000.00

Civil Service Commission.

For payment of salaries, stationery and sundry expenses, including unpaid bills of 1897, 1898 and 1899	38,000.00

Payment of 1899 Bills.

For unpaid bills of 1899 Department of Electricity...	28,074.34

City Engineer's Office.

For payment of one year's salary to W. D. Hotchkiss, Ass't Engineer, during period of service, May 1, 1898, to May 1, 1899, in United States Army, as per ordinance of City Council, Oct. 17, 1898, page 793 of Proceedings.....	1,620.00
For restoration and repair of streets (including unpaid bills of 1899.....	1,433.23

106 Public Buildings.

For unpaid bills of 1898.....	7,723.58

Seventy Third Street Pumping Station.

Horse Feed for 1899.....	1,980.00
For miscellaneous work performed for Board of Local Improvements, other departments and outside depositors. This amount to be in addition to any appropriation made for labor, teaming, material, horse hire, and all necessary expenses for sewer repair work, Payments on account actually collected from depositors and taken up as miscellaneous receipts in the general fund.....	70,000.00

Election Expense.

For the payment of judges and clerks having served at the April, 1899, elections.....	94,245.00

Fire Department.

For unpaid bills of 1899.....	18,720.13

House of Correction.

For unpaid bills of 1899.....	28,032.50

Judgment Account.

For payment of judgments and costs against the City.	50,000.00

Legal Expense.

City Attorney's unpaid bills, 1899.....	5,857.00

Department of Police.

For deficiency in miscellaneous appropriations of 1899.	53,153.75
" " " " " " 1898.	20,000.00

Sundry Claims.

For payment of unpaid bills of 1898 and claims allowed by City Council for which no appropriation has been made as per schedule certified to City
107 Comptroller by finance committee, and for payment of the claim of J. J. Sullivan, for sidewalk construction in the sum of $591.88..... 29,138.32

That the following item is valid.

Bridge Construction.

For construction of new bridges to replace those at Ninety-fifth street, Clybourn Place, North Avenue, Division street over Canal, Division street over North Branch, South Western Avenue, and Thirty-seventh street (Bridge is to be built at an approximate cost of $200,000.00 each) of which sum only $850,000.00 shall be expended during the year 1900, $1,250,000.00 ..... 850,000.00
Less amount of appropriation not to be expended during 1900..... 400,000.00

And that the item for interest in city indebtedness to the extent of $636,469.00 is valid; and as to the amount of $304,031, is invalid, and that such invalid items amount to 13.05 per cent. of said taxes levied, and that the objections are sustained to the said City tax to the extent of 13.05 % thereof and overruled as to the remainder.

And the Court further finds that the levy by the City of Chicago for the tax for the year 1900 for school purposes is a valid levy, and the taxes are collectible as levied.

It is therefore ordered, adjudged and decreed by the Court, that all objections based upon said Assessors' plat be and the same are hereby overruled.

That the objections to the City taxes aforesaid, be and the same are hereby sustained to the extent of 13.05 per cent. of said taxes, and overruled as to the remainder and that all objections to
108 the school tax aforesaid be and the same are hereby overruled.

It is further ordered that judgments of sale are hereby levied against said premises in favor of the People of the State of Illinois for all of said taxes, except said City tax, and as to said City tax judgment be and the same is hereby entered for 86 95/100 per cent. thereof in favor of the People of the State of Illinois, with penalties and costs severally due hereon for the months of May, June and July, 1900.

And it is ordered by the Court that said premises, or so much thereof as shall be sufficient to satisfy the amount of taxes, penalties and costs annexed to them severally be sold as the law directs.

Whereupon the objector excepted to the finding of the Court and

prayed an appeal from said findings to the Supreme Court of the State of Illinois, which appeal is granted upon the objectors filing a bond in the sum of $250 to be approved by the Clerk of this court and bill of exceptions within 30 days, and depositing the amount of said taxes &c. as the law directs.

109 STATE OF ILLINOIS, *County of Cook, ss:*

I, Philip Knopf, Clerk of the County Court of Cook County in the State aforesaid, and keeper of the records and files thereof, do hereby certify that the foregoing is a true and correct copy of Certain objections of Title Guarantee and Trust Company filed with the Clerk of said Court on the 10th day of July, A. D. 1901, and a certain order entered of record August 7th, A. D. 1901, In the matter of the application Samuel B. Raymond, County Treasurer and *Ex-officio* Collector of Cook County, for Judgment of sale for Delinquent Taxes for 1900 and prior thereto. Objections General No. 75.

All of which appears from the records and files in my office.

In Witness Whereof, I have hereunto set my hand and affixed the seal of said County Court, at my office in the City of Chicago, in said County, this 17th day of May, A. D. 1902.

PHILIP KNOPF,
[SEAL.] *Clerk of the County Court.*

Mr. JOHNSON: That is all I have got to offer.

110 MAY 26TH, 1902.

Mr. MOSLEY, recalled for further cross-examination by Mr. E. S. Smith.

Q. What amount if any, is included in the gross expenses of $2,258,780.24 in exhibit "A" for depreciation?

A. I find $168,695.30 included, which was less than might properly have been deducted as appears from what Mr. Hibbard, our General Manager, has said in this case. I may say that a sum of $8,422.47 paid about April 1901 for 1900 Real Estate Taxes was not specifically included in the gross expenses.

Q. How did you ascertain the item of $129,693.70 in exhibit "A"?

A. I deducted $168,695.30 from 6% upon the full (not 1/5) assessed equalized value. This was greater than shown by my report of 1900 November, to the State Board for I had not then been able to learn how much some of the Assessors and Boards of Review had increased our returns.

Signature waived by agreement of Counsel.

111 2 p. m., THURSDAY *June* 5, 1902.

Parties met pursuant to agreement.
Present: Mr. Wheeler, Mr. Shepard.

CHARLES E. MOSLEY, recalled for further examination by Mr. Shepard, testified as follows:—

Q. Mr. Mosley, you stated that the amount of equalized tangible property on which you paid in Illinois was $994,630.00. Tell us whether your real estate was included in that?

A. I have found by subsequent examination that real estate of an equalized valuation of $96,022.00 was included, but it was an unintentional error.

Q. What cash, if any, is included.

A. I have examined our return and find that $7,484.00, which was cash in bank and checks in my office, and also $15,000.00 of the bonds in my office were included.

Q. What do you now say the equalized value of your personal property was?

A. $876,124.00. I have here, Mr. Shepard, a tabulated statement in which the additional tax is calculated and in explanation of the additional depreciation deducted, I would say that it is calculated at the rate of 6 per cent. upon the above stated
112 amount of net equalized assessed personal property. This statement has been prepared in response to the understood desire of the Masters in this case, and differs from the one heretofore presented by me and marked "Complainant's Exhibit A" in that the net equalized assessment of personal property is here taken as being but 70 per cent. of the full value, while the first statement presented treated such assessment as being the full value.

Signature waived by agreement of counsel.

Mr. WHEELER: I offer in evidence this statement presented by the witness and ask that it be marked Complainant's Exhibit B.

(Said statement is in words and figures as follows, to wit.)

Which was all the evidence offered or received in the above entitled cause.

113 COMPLAINANT'S EXHIBIT B.

Chicago Telephone.

Capital, April 1, 1900, $5,000,000.00.

Gross Revenue, 1900		$3,129,238.18
Deductions to ascertain Net Earnings of April 1, 1900, Property:		
Gross Expenses (Includes $168,695.30 Depreciation)	$2,258,780.24	
Additional for a total 3% Depreciation	206,786.20	
Earnings from Stock Issued after April	140,233.60	
Unearned Real Estate Credits	23,826.59	
		2,629,626.63
		499,611.55
Deduct Additional 1900 Tax		7,211.55
1900 Net Earnings		492,400.00
Capitalized at 6%		8,206,666.00
Less Assessed Value Outside of Illinois		43,620.00
		8,163,046.00
Equalized by deducting 30%		5,714,132.00
Divide by 5		1,142,826.00
Less Equalized Value Illinois Tangible Personal		876,124.00
Net Capital Stock		266,702.00
Less Capital Stock on which Tax has been paid		175,000.00
		91,702.00
Rate for 1900 Taxation		.0787
Additional Tax to be paid for 1900		$7,216.95

(Endorsed:) Filed June 9, 1902, Marshall E. Sampsell, Clerk.

114 And on to-wit: the nineteenth day of May, 1906, came the City of Chicago, by its solicitors and filed in the clerk's office of said Court its certain Answer in words and figures following to-wit:

113 *Answer of City of Chicago.*

In the United States Circuit Court, Northern District of Illinois.

No. 26177.

CHICAGO TELEPHONE COMPANY, Complainant,

vs.

SAMUEL B. RAYMOND, County Treasurer and *Ex-Officio* County Collector of Cook County, and MAURICE FITZGERALD, Collector of the Town of South Chicago.

Answer of the City of Chicago to the Bill of Complaint of the Chicago Telephone Company, complainant, filed herein, after leave of Court for that purpose first had and obtained.

This defendant, now and at all times hereafter saving and reserving unto itself all benefit and advantage of exception which can or may be had or taken to the many errors, uncertainties and other imperfections in the said bill contained, for answer thereunto, or to so much and such parts thereof as this defendant is advised is material or necessary for it to make answer unto, answering, says:

1. This defendant admits that the complainant is a corporation organized and existing under the laws of the State of Illinois, and is and has been for a number of years owner of telephone
116 lines, exchanges and equipment in several counties named in paragraph 1 of Complainant's bill of complaint, with its principal office and place of business in the Town of South Chicago, in the City of Chicago, Cook County, Illinois.

2. This defendant, further answering, admits that the defendant Maurice Fitzgerald was at the time of filing said complainant's bill of complaint Town Collector of the said town of South Chicago, and as said collector is charged by law with the duty of collecting taxes payable from persons in said Town, and that the defendant Samuel B. Raymond was at the time of the filing of complainant's bill of complaint the County Treasurer, and *ex-officio* County Collector of said County, and as such Collector warrants for the said Town of South Chicago will come into his hands for collection, according to law.

3. This defendant, further answering, says, that as to the allegations in paragraph 3 in Complainant's said bill of complaint, in regard to the information furnished to the assessors of the counties therein named, excepting Cook County, that it has no knowledge or information, save that contained in said bill, and therefore neither admits nor denies the same; but if the same should become material to the issues involved herein, demands strict proof thereof. But this defendant denies that the said complainant or anyone for
117 it prepared and filed with the proper officers a schedule of its property assessable in Cook County for the year 1900 in the manner and form and at the time required by law. And denies

that full information concerning its tangible property in said Cook County was furnished as alleged in said bill. But this defendant states and alleges the fact to be that the local assessors for the County of Cook did make an assessment of the tangible property owned by the complainant on the first day of April, 1900, and subject to assessment for that year, and returned said assessment as required by law.

4. This defendant further answering admits that the State Board of Equalization for the State of Illinois convened in regular session at Springfield, on or about the 11th day of September, 1900, and that said State Board of Equalization equalized the assessment of tangible property in the State as between the different Counties of the State, and that the total full valuation of complainant's said tangible property owned by it on the first day of April, 1900, was fixed and equalized by said State Board at the full value of $4,123,670, and at the assessed value of $824,734. And this defendant further admits that complainant, by its officers, appeared before the said State Board of Equalization, and that said State Board of Equalization made an alleged finding of the
117½ full value of complainant's capital stock and franchises of the sum of $4,998,670, and of an alleged assessed value of $999,734, and deducted from said alleged assessed value the equalized assessed value of Complainant's tangible property of $824,734, leaving an alleged net assessment of the capital stock and franchises of complainant for the year 1900, in excess of the said equalized value of the tangible assets and property of $175,000.

5. This defendant further admits that said alleged assessment of $175,000 was duly certified to the County Clerk of Cook County, and that said County Clerk extended against said assessment the different taxes levied for the year 1900, proper to be extended against the same, and that warrants for the collection of said taxes were duly issued to the Town Collector of the Town of South Chicago for collection.

6. This defendant further answering admits that the complainant paid the full amount of taxes levied and extended upon said assessment of its tangible property, and also paid to the then collector of the Town of South Chicago, the sum of $14,642.25, being the amount of taxes extended against said alleged net assessment of the capital stock and franchises of the complainant of $175,000. And further admits, to the best of its knowledge and belief, that no portion of said taxes has been returned or ten-
118 dered back to complainant; but this defendant denies that said payment was in full satisfaction of all taxes against any proper assessment of complainant's capital stock and franchises for the year 1900.

7. This defendant further answering states upon information and belief, and from such information and belief charges the fact to be, that the full, fair, cash value of complainant's capital stock and franchises on April 1st, 1900, was far in excess of $4,998,670, and that the actual fair cash value thereof on said date was in excess of $30,639,000, and that notwithstanding the fair cash value

of complainant's capital stock and franchises as aforesaid the said State Board of Equalization, in total disregard of its duty as required by law, wilfully and fraudulently found the full value of the complainant's capital stock and franchises as heretofore set forth, and set down an assessment of the same over and above the assessment of its tangible property by the local assessors, as above set forth, which said fraudulent and illegal action on the part of the said State Board of Equalization in relation to the valuation and assessment of complainant's property was had by and with the concurrent fraudulent action of the complainant itself, in its failure to properly list and schedule its property for the purposes of taxation, and to furnish the statements required by law, and in
119 its fraudulent representations to the said State Board of Equalization. And this defendant further states and alleges the fact to be that the said alleged assessment was and has been long prior to the filing of this bill held and declared by the Circuit Court of Sangamon County and by the Supreme Court of the State of Illinois to be null and void, and that a reassessment of the capital stock and franchises of the said Complainant over and above the assessed value of its tangible property was ordered by the Circuit Court of Sangamon County. This defendant further answering admits that while the State Board of Equalization was still in session for the year 1900 a petition for mandamus was filed in the Circuit Court of Sangamon County by the People of the State of Illinois upon the relation of one Catherine Goggin, a resident of Cook County, and Robert C. Steele, a resident of said Sangamon County, and that certain proceedings were had in said cause in and by which a new assessment was ordered in said mandamus proceeding by said Circuit Court of Sangamon County. This defendant further states and alleges the fact to be that it was prayed in said petition for mandamus that said State Board of Equalization be commanded to make a lawful assessment for the year 1900, upon the capital stock and franchises of the complainant herein, and other corporations named in said petition. This defendant further answering admits that neither the complainant herein nor
120 any of said other corporations were made parties defendant to said petition, but this defendant states upon information and belief, and from such information and belief charges the fact to be that this complainant and the other said corporations named in said petition were requested and directed by the said State Board to appear in said proceeding by their own solicitors, and to make such defense or defenses as they might deem advisable, and that this complainant, together with said other corporations, did appear in said proceedings in the Circuit Court of Sangamon County, and in the appeal taken therefrom to the Supreme Court of the State of Illinois by their solicitor, and made such defense as they deemed advisable, which defenses were made for the benefit of the complainant herein, and the other said corporations, as fully and effectually as if this defendant and said other corporations had been parties defendant to said petition for mandamus by name. This defendant further answering admits that final judgment was ren-

dered by the Circuit Court of Sangamon County, and that an appeal was prayed to the Supreme Court of the State of Illinois, but as to what defenses were interposed in said circuit Court or in said Supreme Court this defendant has no knowledge or information, save as contained in said bill of complaint, and therefore neither admits nor denies the allegation in said bill concerning the same,
121 but demands strict proof thereof. This defendant further answering admits that on or about the 24th day of October, 1901, the said judgment of the said Circuit Court of Sangamon County was affirmed by the Supreme Court of Illinois, and that thereafter a peremptory writ of mandamus was issued by the Circuit Court of Sangamon County, commanding the said State Board of Equalization substantially as on pages 9 and 10 of complainant bill of complaint set forth.

8. This defendant further answering admits that on or about the 17th day of December, 1901 the Said State Board of Equalization convened at Springfield, Illinois, in regular session, as required by law, and that prior thereto an election of the Board had intervened between the session of the Board in 1900 and the session in 1901, and that the membership of said State Board had largely changed; and further admits that while said State Board was in regular session, as aforesaid, a peremptory writ of mandamus issued on the said Judgment of the said Sangamon County Circuit Court, was served upon the members thereof. This defendant further answering says that as to the allegations in paragraph 8 of said Complainant's bill of complaint, in regard to the proceedings which were had before said State Board, it is not informed except by complainant's said bill of complaint, and therefore it neither admits nor denies the same, but if the same should become material
122 to the issues herein, demands strict proof thereof. This defendant further answering admits that thereafter, and on or before the 20th day of November 1901, the said State Board of Equalization made an assessment of the capital stock and franchises of the complainant in the several amounts as alleged on page 13 of complainant's bill of complaint. But this defendant further answering denies that said State Board in making said assessment failed or refused to take into account any former assessment for the year 1900, or refused and neglected to equalize the assessment of complainant's capital stock and franchises with the assessments on all other taxable property in the State of Illinois for said year, and denies that the assessed valuation for the year 1900 of such other property did not exceed one-fifth of seventy per cent. of the cash value thereof. But this defendant states and alleges the fact to be that the other property in the State of Illinois was assessed by the different assessing tribunals at what said tribunals considered and ascertained to be one fifth of the full fair cash value thereof. This defendant further answering denies that under the said mandate of the said Circuit Court of Sangamon County, the said State Board of Equalization had no right to take into consideration the rate of assessment of other taxable property as equalized for the year 1900,

and denies that said State Board acted under the belief that
123 they had no such right. But this defendant states and alleges the fact to be that in making said assessment in pursuant to said mandate the said State Board of Equalization, after taking into consideration the assessment on other property, and the value of complainant's property in pursuance of the rules of the said State Board which had heretofore been adopted by said State Board, and which had received the sanction of the Supreme Court, ascertained and fixed for purposes of taxation for the year 1901, the value of complainant's capital stock and franchises as set forth on page 13 of complainant's bill of complaint. And this defendant further answering states and alleges the fact to be that the complainant herein had due notice, knowledge, and information that it was the duty of the said State Board at its said session in 1901 to make an assessment of the capital stock and franchises of the complainant for the year 1901, and that said State Board intended to make such assessment, and that complainant had the right to appear before said Board in regard to the same. This defendant further answering admits that on or about the 22nd day of November, 1900, the State Board of Equalization of the State of Illinois, adopted certain pretended resolutions or rules, substantially as set forth on pages 15 and 16 of complainant's bill of complaint; and further admits that the said Supreme Court in said mandamus proceedings adjudged that the said rules were in conflict with the revenue laws of the State of Illinois, and were illegal and inoperative. And
124 this defendant states and alleges the fact to be that under the rules which were theretofore in force, remained in force until on or about the 10th day of December, 1901, when the State Board adopted certain other rules substantially as set forth on pages 17 and 18 of complainant's bill of complaint. This defendant further answering says that as to the allegations in said bill of complaint contained regarding the valuations of taxable property in the State of Illinois and in Cook County for the years 1899, 1900 and 1901, it has no knowledge or information, except that contained in said bill of complaint, and therefore neither admits nor denies the same, but if such facts should become material to the issues herein, demands strict proof thereof. This defendant further answering denies that the equalized valuation of all taxable property for the year 1899, did not equal one fifth of the actual value of said property, and denies that the local assessing tribunals of the state assessed property within their jurisdiction with any other view or upon any other basis than upon one fifth of what they considered and determined to be the actual fair cash value. This defendant, further answering, denies that the equalized assessed valuation of taxable property in the State of Illinois for the year 1900 did not exceed one fifth of seventy per cent. of the actual fair cash value thereof, but states and alleges the fact to be that the
125 different assessing tribunals of the state assessed the property subject to taxation by them at an assessed valuation of one fifth of what such tribunals considered and determined to be the actual cash value thereof. This defendant further answering says

that it has no knowledge or information excepting that contained in said bill of complaint as to what the members of the said State Board of Equalization believed was the rate upon which the local assessors throughout the State had based their findings or assessed the full valuation for the year 1900, and therefore neither admit nor deny the same. And this defendant further answering denies that in making said assessment for the year 1900 there ought to have been any reduction from the valuation as ascertained by said State Board, and denies that in no case ought such assessment to have exceeded the sum of $542,687, and denies that the members of said State Board did not exercise their own judgment and discretion in equalizing the valuation of complainant's capital stock and franchises for the year 1900 with the equalized assessment of other taxable property in the State of Illinois for said year. And denies that the members of said State Board were coerced or threatened or considered themselves to be coerced or threatened by said writ of said Sangamon County Circuit Court, or that they were acting or considered themselves to be acting under the specific instructions, or that they were debarred from the exercise of their legal judgment and discretion.

126 9. This defendant further answering admits that the assessments, as made by the said State Board were certified and extended, and the warrants delivered, and that interest was added thereto, as required by the law of the State of Illinois, substantially as set forth in paragraph 9, pages 24 and 25, of Complainant's said bill of complaint.

10. This defendant further answering denies that the said capital stock assessment for the year 1900 is illegal, unequal, wrongful or in violation of the Constitution of the United States or of the Constitution of the State of Illinois; and denies that the making of said new assessment for the year 1900, and the collection of the taxes extended thereon, constitute an attempt to take complainant's property without due process of law, and are in violation of any of the provisions of the Constitution of the United States, or of the Constitution of the State of Illinois. And denies that complainant is thereby denied the equal protection of the laws guaranteed by the Constitution of the United States. And this defendant further answering denies that the assessment of complainant's property, compared with the assessment of the properties of other corporations of the State of Illinois, has deprived the complainant of the equal protection of the laws, in violation of the Constitution of the United States, and denies that the complainant is subjected to ex-

127 cessive and disproportionate taxation. This defendant further answering states that it is a municipal corporation, duly organized and existing under and by virtue of the laws of the State of Illinois, and that under and by virtue of the laws of the State of Illinois, it will be the duty of the County Collector and the County Treasurer of Cook County, Illinois, to pay over to this defendant as its share of the taxes so due and owing from the complainant in this cause, the sum of $42,351.78, and therefore this defendant shows that it is in equity the owner of and entitled to receive the

said sum of $42,351.78, out of the taxes now in controversy in this cause.

11. This defendant further answering denies that the complainant is entitled to any of the relief asked for in paragraph 11 of its bill of complaint, and denies that the payment of taxes by the complainant under the alleged first assessment for the year 1900 and the collection of interest thereon, would deprive complainant of its property without due process of law, and would deny complainant the equal protection of the laws, in violation of any of the provisions of the constitution of the United States.

12. This defendant further answering admits that the collector's warrant for the collection of said taxes were at the time of filing the bill of complaint in this cause in the hands of the defendant Maurice Fitzgerald for collection, and under the laws of the State of Illinois it is the duty of the Town collector to enforce
128 collection thereof by levy upon the personal property of the complainant. And this defendant further answering says that as to the allegations in said bill of complaint contained not herein specifically answered, admitted or denied, is that this defendant neither admits nor denies the same, but demands strict proof thereof. And this defendant further answering denies that the complainant is entitled to the relief or any part thereof in said bill of complaint demanded, and prays the same advantage of this answer as if it had pleaded or demurred to the same, and prays to be henceforth dismissed with its reasonable costs and charges in this behalf most wrongfully sustained.

CITY OF CHICAGO,
By DAVID K. TONE, *Special Counsel.*
JAMES HAMILTON LEWIS,
Corporation Counsel.

(Endorsed:) Filed May 19, 1906 Marshall E. Sampsell, Clerk.

129 And on to-wit: the twenty-fifth day of July, being one of the days of the regular July term of said Court, 1906, in the record of proceedings thereof in said entitled cause before the Hon. Peter S. Grosscup, Circuit Judge, appears the following entry to-wit:

130 In the Circuit Court of the United States for the Northern District of Illinois, Eastern Division.

26177.

CHICAGO TELEPHONE COMPANY
vs.
MAURICE FITZGERALD, Town Collector of the Town of South Chicago, SAMUEL B. RAYMOND, County Treasurer, and CITY OF CHICAGO.

This cause came on to be further heard at this term, and was argued by counsel; and thereupon, upon consideration thereof, it

is ordered that all objections and exceptions to the Master's reports be, and the same are hereby overruled, and that the Master's reports and each of them be, and they are hereby approved and confirmed; and the court finds that all the material allegations of the bill of complaint are sustained by the evidence, and that the equities of the case are with the complainant; and thereupon the court doth order, adjudge and decree as follows:

That the assessment made by the State Board of Equalization of the State of Illinois, at its session in 1901, against the complainant, Chicago Telephone Company, upon its capital stock for the year 1900 (the net amount of said assessment being $775,266) was made under the coercive influence of a writ of mandamus issued by the Circuit Court of Sangamon County, in the State of Illinois, and did not represent the real or independent judgment of the said State Board of Equalization, and that the assessments made by said State Board of Equalization, at its meeting held in 1901, upon the capital stock of the said complainant, and upon the capital stock of the other corporations named in the writ of mandamus above mentioned, for the year 1900, was in fact made upon a materially different basis from that upon which the capital stock of all other
131 corporations of the same class was assessed by the said State Board of Equalization for the year 1900, and also upon a basis materially different from that upon which all other taxable property in the State of Illinois was assessed for the year 1900; that said assessment made in 1901 on the capital stock of the complainant for the year 1900, was made under the coercive influence of said mandamus without the exercise or application of the judgment of the State Board of Equalization, or the members thereof, to the ascertainment of the value of said capital stock, and without the State Board of Equalization, either in fact or in form, taking into consideration the basis upon which all other taxable property in the State of Illinois was assessed and taxed for the year 1900, and without in fact or in form equalizing the valuation or assessment of the capital stock of said complainant for the year 1900 with all or any of the assessments made upon the other taxable property in the State of Illinois for the year 1900, with the result that the said assessment on the capital stock of complainant, made in the year 1901 for the year 1900, was made on a much higher basis than that upon which the other taxable property of the State of Illinois was assessed and taxed for the year 1900; and that said assessment upon said capital stock for the year 1900 was and is unjust and inequitable; that the making of said assessment as aforesaid in 1901, upon the capital stock of the said complainant, and the extension of taxes thereon, and the attempt to enforce the payment of such taxes so extended, from complainant, was and is a violation of the Fourteenth Amendment to the Constitution of the United States, and that the attempt to enforce the collection from complainant of the taxes extended on said reassessment will, unless restrained, result in a mul-
132 tiplicity of suits, and in irreparable injury to complainant.

An order was entered herein on the 28th day of June, 1902, as a condition precedent to the granting of the temporary

relief prayed for in the bill of complainant herein, that complainant should pay, in addition to the tax already paid upon the first or original capital stock assessment for the year 1900, the further sum of $7,216.95 making a total capital stock tax to be paid by complainant for the year 1900 of $21,859.20 which is found and decreed by the court to be all that complainant should equitably be required to pay as capital stock tax for the year 1900. Said additional sum of $7,216.95 has been paid by complainant to the county treasurer of Cook County, in compliance with said order, making the total amount paid by complainant, as taxes upon its capital stock for the year 1900, the said sum of $21,859.20.

It is therefore, further ordered, adjudged and decreed that the said assessment of $775,266.00 on the capital stock of complainant, made by the State Board of Equalization in the year 1901 for the year 1900, and all taxes levied and extended thereon, and now spread upon the books of the tax collecting agencies in the City of Chicago, County of Cook and State of Illinois, for collection, be and they are, and each of them is illegal, null and void, and that the defendants, Maurice Fitzgerald, Town Collector of the Town of South Chicago, and his successor and successors in office, as such Town Collector, and the defendant, Samuel B. Raymond, County Treasurer of Cook County, Illinois, and *ex-officio* County Collector of said County and his successor and successors in office, as such County
133 Treasurer and *ex-officio* County Collector and the defendant, the City of Chicago, and each of them, and each and every of their respective agents, deputies, servants, attorneys and representatives be, and they are and each of them is, hereby perpetually enjoined and restrained from in anywise levying or collecting, or in any manner attempting, directly or indirectly, to levy or collect, or to enforce against the complainant, or against any of its property, said tax or taxes, or any or either of them, or any part thereof.

It is further ordered, adjudged and decreed that the costs of this cause be taxed against complainant.

134 And on to-wit: the tenth day of August, being one of the days of the regular July term of said Court, 1906, in the record of proceedings thereof before the Hon. Peter S. Grosscup, Circuit Judge, appears as of July twenty-fifth, 1906, the following entry to-wit:

135 *Order of August* 10, 1906. *Entered as of July* 25, 1906.

In the Circuit Court of the United States, Northern District of Illinois, Eastern Division.

No. 26177.

CHICAGO TELEPHONE COMPANY
vs.
SAMUEL B. RAYMOND ET AL.

This cause this day coming on to be heard, after due notice to all the parties in this cause; and it appearing to the court that prior to the entry of the final decree in this cause July 25th 1906, the term of office of Samuel B. Raymond as County Collector, had expired, and that John J. Hanberg had been duly elected and qualified as his successor in office; and it appearing that prior to the entry of the final decree herein, said John J. Hanberg, as the successor in office of said Samuel B. Raymond, entered his appearance in this cause and was made a party defendant and adopted all the pleadings and proceedings of the other defendants in this cause, and agreed not to introduce any new evidence.

Now it is hereby ordered that the final decree herein, entered on the 25th day of July, 1906, be so amended as to insert the following words on the last page of said decree in the first line, after the words, "The City of Chicago" to wit: "And John J. Hanberg, successor in office of said Samuel B. Raymond, as County
136 Treasurer of Cook County, Illinois and *ex-officio* County Collector of Cook County, Illinois, and *ex-officio* Town Collector of the various Towns within the City of Chicago, and his successor and successors in office," this order entered *nunc pro tunc* as of July 28th, 1906.

137 And on to-wit: the tenth day of August, 1906, there was filed in the clerk's office of said Court in said entitled cause a certain Certificate in words and figures following to-wit:

Certificate.

In the Circuit Court of the United States, Northern District of Illinois.

No. 26177.

CHICAGO TELEPHONE COMPANY, Complainant,
vs.
SAMUEL RAYMOND, County Collector, ET AL., Defendants.

Be it remembered that on the final hearing of the above entitled cause, before his Honor Judge Grosscup, on the 5th day of June,

1906, counsel for the City of Chicago made and insisted upon before the Court each and every objection in reference to the admission and exclusion of evidence made by the defendants or any of them before the Master, as shown in the various Masters reports now on file in this cause, and said objections and each of them were overruled by the Court, to which rulings and to each of them counsel for the City of Chicago excepted; and counsel for the City of Chicago also objected to the Court hearing or considering any oral evidence for the purpose of explaining, varying or contradicting the official acts, records and proceedings of the said Board of Equalization of the State of Illinois for the year 1900 and 1901 in reference to the capital stock assessment levied by the State Board of Equalization of the State of Illinois against the complainant in the year 1901 as and for the year 1900.

138 Said objection was overruled by the Court, to which ruling counsel for the City of Chicago excepted; the court basing its decree not upon the findings of fact by the Master but upon the evidence contained in the Master's report.

P. S. GROSSCUP.

(Endorsed:) Filed Aug. 10, 1906. Marshall E. Sampsell, Clerk

139 And on to-wit: the tenth day of August, 1906, came the defendants in said entitled cause by their solicitors and filed in the clerk's office of said Court their certain Petition for Appeal in words and figures following to-wit:

140 *Petition for Appeal.*

In the Circuit Court of the United States, Northern District of Illinois, Eastern Division.

No. 26177.

CHICAGO TELEPHONE COMPANY, Complainant,

vs.

SAMUEL B. RAYMOND, County Treasurer, Cook County, Illinois, and *ex-officio* County Collector, Cook County, Illinois, and JOHN J. HANSBERG, His Successor in Office as County Treasurer of Cook County, Illinois, and *ex-officio* County Collector of Cook County, Illinois, and *ex-officio* Town Collector of the Town of South Chicago, and MORRIS FITZGERALD, Town Collector of the Town of South Chicago, and THE CITY OF CHICAGO, Defendants.

Petition for Appeal.

The above named defendants, Samuel B. Raymond, County Treasurer, Cook County, Illinois, and *ex-officio* County Collector Cook County, Illinois, and John J. Hanberg, his successor in office as County Treasurer, Cook County, Illinois, and *ex-officio* County

Collector of Cook County, Illinois, and *ex-officio* Town Collector of the Town of South Chicago, and Morris Fitzgerald, Town Collector of the Town of South Chicago, and the City of Chicago, and each of them, believing themselves to be aggrieved by the
141 order and decree of this Court, made and entered on the 25th day of July, A. D. 1906, whereby the said defendants and each of them, and each and every of the officers, agents and employés of the said defendants are perpetually enjoined and restrained from in any wise levying or collecting or in any manner attempting to levy or collect or to enforce against the complainant the taxes or any or either of them made and levied by the State Board of Equalization in the year 1901 for the year 1900, said taxes amounting to the sum of $775,266—all of which appears of record in said Court and which decree is more fully set forth in the records in said cause, and the said above named defendants hereby jointly and severally pray an appeal from said order and decree to the Supreme Court of the United States.

HARRY A. LEWIS,
WILLIAM F. STRUCKMANN,
JAMES HAMILTON LEWIS, AND
DAVID K. TONE,
Solicitors for the Above Named Defendants.

The above appeal is allowed, and the appeal bond is fixed at $200, said bond to be approved by the Clerk of this Court.

P. S. GROSSCUP.

(Endorsed:) Filed August 10, 1906, Marshall E. Sampsell, Clerk.

142 And on to-wit: the tenth day of August, 1906, came the defendants in said entitled cause by their solicitors and filed in the clerk's office of said Court their certain Assignment of Errors in words and figures following to-wit:

143 *Assignment of Errors.*

In the Circuit Court of the United States, Northern District of Illinois, Eastern Division.

No. 26177.

CHICAGO TELEPHONE COMPANY, Complainant,

vs.

SAMUEL B. RAYMOND, County Treasurer, Cook County, Illinois, and *ex-officio* County Collector, Cook County, Illinois, and JOHN J. HANBERG, His Successor in Office as County Treasurer of Cook County, Illinois, and *ex-officio* County Collector of Cook County, Illinois, and *ex-officio* Town Collector of the Town of South Chicago, and MORRIS FITZGERALD, Town Collector of the Town of South Chicago, and THE CITY OF CHICAGO, Defendants.

Assignment of Errors.

The above named defendants, Samuel B. Raymond, County Treasurer, Cook County, Illinois, and *ex-officio* County Collector of Cook County, Illinois, and John J. Hanberg, his successor in office as County Treasurer of Cook County, Illinois, and *ex-officio* County Collector of Cook County, Illinois, and *ex-officio* Town Collector of the Town of South Chicago, and Morris Fitzgerald, Town Collector of the Town of South Chicago, and The City of Chicago, jointly and each of them separately and severally show that in the record and proceedings in the above entitled cause and in the decree made herein July 25th, 1906, manifest error has occurred, to the prejudice of these defendants and each of them, especially in the following particulars:

First. The said Circuit Court erred in failing and refusing to dismiss this cause for want of jurisdiction in a Federal Court, appearing upon the face of complainant's bill of complaint.

Second. The said Circuit Court erred in failing to dismiss complainant's bill of complaint for want of jurisdiction, because
144 the undisputed evidence in this record shows that a Circuit Court of the United States is without jurisdiction to hear and determine the matters and things charged in complainant's bill.

Third. The said Circuit Court erred in refusing to hold that the allegations of the complainant's bill of complaint show that complainant has not been denied by the State of Illinois or its officers, any right, privilege or immunity guaranteed to the com-
145 plainant by the Fourteenth Amendment to the Constitution of the United States.

Fourth. The said Circuit Court erred in refusing to hold that the allegations of complainant's bill of complaint show that the complainant has not been deprived of its property without due process of law, in violation of the Constitution of the United States.

Fifth. The said Circuit Court erred in refusing to hold that the

State of Illinois had not denied to the complainant the equal protection of its laws within its jurisdiction.

Sixth. The said Circuit Court erred in refusing to find that the sole grievance complained of in complainant's bill of complaint is that the officers of the State of Illinois charged with the duty of making a fair and equal assessment of the complainant's capital stock, have made an assessment that is unfair and unequal, contrary to and in violation of the Constitution and the Laws of the State of Illinois; and said Circuit Court likewise erred in assuming and retaining jurisdiction of this cause, when, upon the face of complainant's bill of complaint, it appears that the said Circuit Court was without jurisdiction.

Seventh. The said Circuit Court erred in refusing to hold that inasmuch as the complainant and defendants were all citizens of and residents of the State of Illinois, a Federal Court had no jurisdiction in this cause to hear and determine the fairness, equality or regularity of the assessment made against the complainant, and the said Circuit Court erred in refusing to dismiss this cause for want of jurisdiction.

146 Eighth. The said Circuit Court erred in entering upon a calculation as to the amount of taxes to be paid by the complainant upon its capital stock for the year 1900 and in finding and determining the amount of said taxes, for said Circuit Court should have held that the determination as to the amount of taxes to be paid by all persons within the State of Illinois was a matter exclusively committed by the laws of Illinois to the assessing officers of the State of Illinois.

Ninth. The said Circuit Court erred in overruling the objections and exceptions and each and every of said objections and each and every of said exceptions to the said Masters' Reports and to each of them.

Tenth. The said Circuit Court erred in approving and confirming the Masters' Reports and each of them filed in this cause.

Eleventh. The said Circuit Court erred in failing and refusing to sustain the objections and each and every of the same filed by the defendants to said Masters' Reports and to each of said reports.

Twelfth. The said Circuit Court erred in finding that all of the material allegations of the bill of complaint are sustained by the evidence and likewise in finding that the equities of the case are with the complainant.

Thirteenth. The said Circuit Court erred in failing to find that the material allegations of the bill of complaint in this cause have not been proved by any competent evidence.

147 Fourteenth. The said Circuit Court erred in finding that the assessment made by the State Board of Equalization of the State of Illinois at its session in 1901 against the complainant, upon its capital stock for the year 1900, amounting to $775,266., was made under the coercive influence of a writ of mandamus issued by the Circuit Court of Sangamon County, in the State of Illinois,

and did not represent the real or independent judgment of the said State Board of Equalization.

Fifteenth. The said Circuit Court erred in failing and refusing to find that the assessment, amounting to $775,266 made by the State Board of Equalization of the State of Illinois at its session in 1901 against the complainant, upon its capital stock for the year 1900, was made by the said State Board of Equalization in the exercise of its own judgment and upon its official responsibility.

Sixteenth. The said Circuit Court erred in finding that the assessments made by the State Board of Equalization at its meeting, held in 1901, upon the capital stock of said complainant and upon the capital stock of the other corporations for the year 1900, named in the writ of mandamus, issuing from the Circuit Court of Sangamon County, Illinois, were in fact made upon a materially different basis from that upon which the capital stock of all other corporations of the same class were assessed by the State Board of Equalization for the year 1900, and also upon a basis materially different from that upon which other taxable property in the State of Illinois was assessed for the year 1900.

148 Seventeenth. The said Circuit Court erred in refusing and failing to find that the only competent evidence contained in the record in this cause showed that the assessments made by the State Board of Equalization at its meeting held in 1901, upon the capital stock of said complainant, and upon the capital stock of the other corporations for the year 1900, named in the writ of mandamus issuing from the Circuit Court of Sangamon County, Illinois, were in fact made upon the same or a similar basis as that upon which the capital stock of all other corporations of the same class were assessed by the State Board of Equalization for the year 1900, and also that said assessments as to each of said corporations were made upon the same or a similar basis upon which all other taxable property in the State of Illinois was assessed for the year 1900.

Eighteenth. The said Circuit Court erred in finding that said assessment made in 1901 on the capital stock of complainant, was made under the coercive influence of a writ of mandamus, issuing from the Circuit Court of Sangamon County Illinois, without the exercise or application of the judgment of the State Board of Equalization or the members thereof, to the ascertainment of the value of said capital stock and without the State Board of Equalization, either in fact or in form, taking into consideration, the basis upon which all other taxable property in the State of Illinois was assessed and taxed for the year 1900 and without in fact or in form equalizing the valuation or assessment of the capital stock of said complainant for the year 1900 with all or any of the assessments made upon other taxable property in the State of Illinois for the year 1900, with the result that said assess-

149 ment made on the capital stock of the complainant, in the year 1901 for the year 1900, was made on a much higher basis than that upon which the other taxable property of the State of Illinois was assessed and taxed for the year 1900.

Nineteenth. The said Circuit Court erred in refusing and failing to find that the assessment made in the year 1901 on the capital stock of the complainant, was made without any coercion and in the exercise of the independent judgment of the State Board of Equalization and the members thereof, for the purpose of ascertaining the fair value of the capital stock of said complainant, and that said assessment was obtained and resulted from the said State Board of Equalization equalizing the valuation or assessment of the capital stock of said complainant for the year 1900 with all of the assessments made upon the other taxable property in the State of Illinois, and that the assessment so arrived at was just and fair to the said complainant.

Twentieth. The said Circuit Court erred in finding that the making of the assessment for the year 1900 upon the capital stock of said complainant, and the extension of the taxes thereon, and the attempt to enforce the payment of the taxes so extended, from complainant, was and is a violation of the Fourteenth Amendment to the Constitution of the United States.

Twenty-first. The said Circuit Court erred in entering the order on the 28th day of June, 1902, to the effect that the complainant should pay, in addition to the tax already paid, upon the first or original capital stock assessment for the year 1900, the
150 further sum of $7,216.95, making a total capital stock tax to be paid by complainant for the year 1900 of $21,859.20, which was found and decreed by the court to be all that the complainant should equitably be required to pay as capital stock tax for the year 1900, for said Circuit Court should have found, if it had jurisdiction of this cause and of the parties hereto, that the complainant should be required to pay the aggregate amount of all taxes assessed against it in the year 1901 as and for the year 1900 upon its capital stock, aggregating $775,266.

Twenty-second. The said Circuit Court erred in ordering, adjudging and decreeing that the assessment of $775,266 on the capital stock of the complainant, made by the State Board of Equalization in the year 1901 for the year 1900 and the taxes levied and extended thereon and now spread upon the books of the tax collecting agencies in the City of Chicago, County of Cook and State of Illinois for collection, are, and each of them is, illegal, null and void, and that the defendants, Samuel B. Raymond County Treasurer of Cook County Illinois, and *ex-officio* County Collector of Cook County Illinois and Morris Fitzgerald Town Collector of the Town of South Chicago, and John J. Hanberg, his successor as County Treasurer of Cook County, Illinois, and *ex-officio* County Collector of said County and *ex-officio* Town Collector of the Town of South Chicago in said County and his successor and successors in office as such County Treasurer and *ex-officio* County Collector and *ex-officio* Town Collector of said Town of South Chicago, and the defendant Town Collector of the Town of South Chicago, and the defendant, the City of Chicago, and each of them and each and every of their respective agents, deputies, servants, attorneys and representatives, be and are perpetually enjoined and restrained from

in anywise levying or collecting or in any manner attempting, directly or indirectly, to levy or collect or to enforce against the complainant or against any of its property, the said tax or taxes or any or either of them or any part thereof.

151 Twenty-third. The said Circuit Court erred in admitting and receiving in evidence over the objection and exception of defendants' counsel, the following testimony of Samuel M. Barnes, a member of the State Board of Equalization, of the State of Illinois for the years 1900 and 1901:—

I heard the members of the State Board of Equalization discuss the remarks of the court on the application for an extension of time to make return to the writ of mandamus. My recollection of one remark that I heard was that it was a mere question of the Board's getting their pencils and getting to work and they ought to do it. I heard one of the Board say that the court was very vituperative in this matter. I think it was either Mr. Schaefer or Mr. Hopkins of the Committee on the Board who was over there listening to the court. The impression I got was very strongly fixed in my mind and it was that his attitude was intensely hostile to the Board and I was told by those who heard him that it was in the shape of a roast from start to finish as far as his manner was concerned. Of course, I cannot just quote the language he used, but rather his manner I was told was vituperative, absolutely so. I was told this by members of the State Board of Equalization who were present and heard the remarks of the Judge. The reassessment as we determined it, was made with a view to satisfying the court, the order of the court. We made no deduction, if I remember rightly, on account of that all of these Companies but two had in 1900 been assessed upon their capital stock. We did not take into consideration the fact, if it was a fact that other property in the State had not been assessed at the maximum more than 70 per cent. of its value. The court, in his discussion, gave an illustration of the manner in which the assessment should be made and I think he made an example of the Gas Company here; in any event one of the companies he made an example of that and

152 in that example he said just how the assessment should be made and as this was an order of the court, we followed that example that he gave in a general way, for all these assessments. Mr. Smith and Mr. Greenacre furnished these tables (referring to complainant's Exhibit A, 10/23/03) said document being a compilation of the value of the capital stock of said Companies, prepared by Miss Goggin and Miss Haley, as members of the Teachers' Federation. Our desire in making this reassessment was in order to satisfy the Circuit Court of Sangamon County, because it was not my judgment that it was a proper assessment. The general idea seemed to be with the committee on capital stock that the action of the committee was dictated by the court. It was discussed between the committee on capital stock at about the time the reassessment was reported to the Board and the first object to be attained was to satisfy the court. The assessments that were made subsequent to this assessment of 1900 were based on what we believed to be the law and in a general way on the judgment of the members, that is on the real value.

The assessment for 1901 we regarded as representing our real judgment and the other we did to satisfy the court. The restraining order issued by the court was dissolved on the 22nd of November and I think it was a very short time after that on that day that we made our return to the writ.

Twenty-fourth. The said Circuit Court erred in admitting and receiving in evidence, over the objection and exception of defendants' counsel, the following testimony of Frank P. Martin, a member of the State Board of Equalization of the State of Illinois for the years 1900 and 1901:—

I remember making the reassessment on or about the 22nd day of November, when a writ of mandamus issued from the Circuit Court of Sangamon County, early in November, and that an application was made to the Circuit Court of Sangamon County for an extension of time within which to make the reassessment, and it was
153 denied. I have read in the examination of Dr. Barnes what purport to be the remarks of Judge Thompson on that occasion. Shortly after those remarks were made by the Judge, they were repeated to me and I was familiar with them. A statement was also made, purporting to have come from Judge Thompson that we had better get our candles and lamps and begin to get busy. We felt, when we made the assessment, that we were bound absolutely by the mandate of the court and the deliberations of the court. I felt at the time that the values ought to be made on the information furnished by Mr. Greenacre from the School Teachers. The capital stock committee, of which I was a member, relied for information in fixing the values in the reassessment in relation to the complainant companies, upon the information furnished by the teachers, being complainant's Exhibit A. We made this assessment because I thought I wanted to satisfy the court and what the court wanted was to satisfy Mr. Greenacre and the teachers. I was not taking my own judgment in the matter at all. I did not take into consideration what other property throughout the State was valued at. I did not take into consideration what the capital stocks of these companies had been assessed at for the year 1900. As far as I remember no deduction was made in fixing the assessed value of the capital stock of these companies on the reassessment on account of property throughout the State on the average, personal and real, not having been returned at full value for assessment at its full value. In the year 1900 and other previous years the State Board of Equalization did not, I think, treat the bonded indebtedness of corporations as assets, and that was so in respect to all corporations throughout the State.

Twenty-fifth. The said Circuit Court erred in admitting and receiving in evidence, over the objection and exception of defendants' counsel the following testimony of John S. Cruttenden, a member of the Board of Equalization of the State of Illinois for the years 1900 and 1901:

154 "I remember the mandamus suit brought on the relation of Catherine Goggin and R. S. Steele against the State Board of Equalization. The writ of Mandamus was issued from the Circuit

Court in Sangamon County, on or about the second of November, 1901, and I remember that an application was made on or about the 9th or 10th of November, to the Circuit Court of said County, for an extension of time within which to comply with the order as expressed in the writ, and I heard read what purported to be the remarks of Judge Thompson made on that application. The information upon which we based the figures that we made for the re-assessment of 1900, was practically based upon the documents laid before us by the Teachers, known as Exhibit B. Our idea in making this assessment, was to comply with the request of the court. The assessment, as finally reached by us, upon these companies named as complainants in these cases, did not represent what we considered to be the value of their capital stock for the purposes of assessment; not according to the information that we gained afterwards. We supposed from this document, that these teachers had pretty reliable information on the values, and we took those figures almost all the way through. We concluded to take the example of the Peoples Gas Light and Coke Company cited by the court for all the cases, thinking that we would satisfy the court. It was the feeling of the Board that if we did not comply with the idea of the court, whether right or wrong, we would all go to jail. I know I had people calling at my office at Springfield and Chicago, at my offices, and informing me that it would be an unpleasant thing to go to jail about this matter. In making this report which was adopted by the Board, we did not make any deduction on account of the assessment against the capital stock that had been made against these companies. We did
155 not make any deduction, because of the fact that other property in the State had not been assessed, to its full value. We proceeded upon the theory that it was absolutely void; that they were not entitled to any credit, and we would not take any chances of punishment for contempt by giving them credit. You told us (Referring to counsel for Union Traction Company) that the Union Traction Company controlled the stock of the Underlying Companies; but we did not give any credit in the re-assessment. We assessed the whole stock of the other Company, too, upon the advice of Mr. Greenacre. In the case of the re-assessment of the Chicago Edison Company for 1900, we made no reduction on account of the Capital stock invested in patent rights. Prior to the year 1900, they equalized and endeavored to make the assessment upon the same basis as to values as property throughout the state was assessed.

Twenty-sixth. The said Circuit Court erred in admitting and receiving in evidence over the objection and exception of defendants' counsel the testimony of Louis D. Hirsheimer, a member of the State Board of Equalization of the State of Illinois, for the year 1901;

"I remember that about the 2nd of November, 1901, a writ of mandamus issued against the members of the State Board of Equalization, returnable November, 22nd, I believe, and that an application was made by the members of the State Board for an extension of time, within which to comply with the order of the court as expressed in its writ. The next morning I heard what purported to be extracts from the remarks of Judge Thompson, in rendering his decision on

the application for an extension. The remarks were freely discussed at the hotel by members of the Board, and I was informed that he was very much displeased by the application for an extension even being asked; and finally gave them the ultimatum of making an assessment, or of being punished for contempt of court. I
156 heard him say that all that was necessary was a lead pencil and a little time, that all it required was the sharpening of a lead pencil and getting to work. The printed form furnished by Miss Haley and Miss Goggin were principally relied upon in making up the figures. Before our report was made I talked with Mr. Smith. Mr. Greenacre stated that the report was all right. I felt that anything Mr. Greenacre would recommend the court would perhaps consider to some extent as right. I heard him say that whatever the views of any member of the Committee as to values to be taken the opinion laid down there was what it would be, or something to that effect. In making up the report, I did not take into consideration the fact that there had been assessments made on all of the complainant companies, except two. In making up the report as to the values of these properties, I did not make any deduction whatever, in order to equalize the values of these properties with the values of other property in the State. We made an application for an extension of time to make these returns, in order to have more time to consider, it, in arriving at our conclusion; but when that was denied, we had to make our report on such information as we had. In making these figures, to a very large extent, we acted upon the wishes of the Teachers' attorney and the Court's instructions.

In the matter of the Chicago Edison Company's assessment for the year 1900, the capital stock was $6,000,000. That was assessed at 125, and a credit of $725,000 was given for United States Patents, leaving $6,775,000. Taking the debt at par, $5,508,000, making a total value of $12,283,000 on a basis of 70 per cent.; making $8,598,100; tangible property, $4,909,165, leaving 3,688,935, full value of the capital stock; one fifth value $737,787.

157 Twenty-seventh. The said Circuit Court erred in admitting and receiving in evidence over the objection and exception of defendants' counsel, the testimony of William M. Flook, as follows:

I made certain mathematical calculations and deductions, which are set forth in "Flook Exhibit A 11/25/03, H. W. B." That Exhibit was compiled, in a general way, from the collection and compilation of statistics and figures from the records of the State Board of Equalization, from the time it first commenced to make reports, in 1873, down to 1900, and from the report of the Railroad and Warehouse Commission of the State of Illinois for 1900, *and from the report of the Railroad and Warehouse Commission of the State of Illinois, for 1900,* and from Brown's Directory of Gas Companies for the year 1900. I have reduced the result of that work to the form of a report or statement. This statement has been made from the source I have now described (referring to said Flook Exhibit A).

Twenty-eighth. The said Circuit Court erred in admitting and receiving in evidence, over the objection and exception of defend-

ant's counsel, the document shown as "Flook Exhibit A, 11/25/03 H. W. B." as follows:

"From the report of the Railroad and Warehouse Commission for the year 1900 (pp. lxxxll–lxxxvll) it appears that there were in that year 116 railroad companies operating within the state of Illinois that the total mileage of main line and branches owned by said railroad companies was 47,685.37; miles; that of such total mileage so owned by said railroad companies, 10,817.10 miles of main line and branches were located in Illinois; that 1,548.71 miles of second, third and fourth additional main tracks were so owned and located in Illinois; that 4,248.86 miles of yards, tracks, sidings and spurs were so owned and located in Illinois; that 164.61 miles of industrial tracks were so owned and located in Illinois, and that
158 103.52 miles of new line building during the year 1900, exclusive of side tracks, were so owned and located in Illinois.

From said report it further appears (pp. lxxxvll–xcIII) that the total amount *of* outstanding of capital stock of said railroad companies was $1,401,508,589.; that the amount of capital stock per mile of line was $28,867.; that the total amount outstanding of bonded debt of said railroad companies was $1,667,190,160.; and that the amount of funded debt per mile of line was $34,305.

Assuming that the value of the railroad property in this state was as great per mile of road as that outside of the state, and multiplying the mileage of the main lines and branches in Illinois (10,817 miles) by the amount of capital stock per mile of line ($28,867.), it appears that the capital stock of said 116 railroad companies represented by the mileage of main lines and branches owned by said railroad companies in this state was $312,254,339.

Upon the same basis, multiplying the mileage of the main lines and branches in Illinois (10,817 miles) by the amount of funded debt per mile of line ($34,305.), it appears that the funded debt of said 116 railroad companies represented by the mileage of main lines and branches owned by said railroad companies in this state was $371,077,185.

Upon the same basis the total amount of capital stock and funded debt represented by the mileage of main lines and branches owned by said railroad companies within this state was $683,331,524.

From the published report of the State Board of Equalization for the year 1900 it appears that the full value of all the railroad property in the State of Illinois, as found*ed* by said Board, included main tracks, second main tracks, side or turnout tracks, buildings on right of way and rolling stock, was $389,393,360.

159 From the published reports of the State Board of Equalization for the year 1873 (p. 35) it appears that the following resolution was referred to the Committee on Assessment of Capital Stock of Corporations:

"Resolved, that for the purpose of equalizing between land, town and city lots, personal property, railroads and corporations, sixty per cent. be the rate of general average in the State."

From the published report of said Board for the year 1874 (p. 79) it appears that the Committee on Capital Stock of Corporations made

a report to the Board, accompanying which was a table (pp. 86, *et seq.*) showing "The assessment of capital stock of companies and associations incorporated under the laws of this State, other than railroad companies." Such companies and associations are listed in said table under the following headings: "Name of company; Location; Capital stock paid up; Total indebtedness, except for current expenses; Market or actual value of paid capital stock and debt; as determined by the state board; Capital stock and debt, as equalized with the aggregate assessment of the state, by deducting forty per cent. of market or actual value; Total equalized value of tangible property assessed where located; Assessed and equalized value of capital stock, being excess of equalized value of capital stock and debt over equalized value of tangible property." The report of said Committee was adopted by the Board. (p. 96.)

160 From the published report of said Board for the year 1875 (pp. 8, 9) it appears that the following resolution was adopted:

"Resolved that in the opinion of this Board, the real and personal property of the state is assessed for the year 1875 at fifty per cent. of its cash value."

From the published report of said Board for the year 1876 (pp. 7, 9) it appears that the following resolution was adopted:

"Resolved that it is the opinion of this Board that the real and personal property of the State has been assessed at fifty per cent. of its cash value, for the year 1876."

From the published report of said Board for the year 1877 (pp. 17, 18) it appears that the following resolution was offered:

"Resolved that it is the opinion of this Board that the real and personal property of the State is assessed for the year 1877 at sixty per cent. of its cash value."

That an amendment changing the percentage from sixty per cent. to fifty per cent. was accepted by the mover of such resolution, and that the same was then adopted.

From the published report of said Board for the year 1878 (p. 10) it appears that the following resolution was offered:

"Resolved that it is the opinion of this Board that the real and personal property of the State is assessed at sixty per cent. of its cash value for the year 1878."

161 Said resolution was amended by changing the percentage from sixty per cent. to fifty per cent., and as amended adopted.

From the published report of said Board for the year 1879 (pp. 10, 11) it appears that the following resolution was offered:

"Resolved that it is the opinion of this Board that the real and personal property of the State, is assessed at sixty-five per cent. of its cash value for the year 1879."

That said resolution was amended by changing the percentage from sixty-five per cent. to fifty per cent., and as amended adopted.

From the published report of said Board for the year 1880 (p. 6) it appears that the following resolution was adopted:

"Resolved that in the opinion of this Board the real and personal

property of the state is assessed at fifty per cent. of its cash value, for the year 1880."

From the published report of said Board for the year 1881 (p. 9) it appears that the following resolution was adopted:

"Resolved that in the opinion of this Board the real and personal property of the State is assessed at fifty per cent. of its cash value, for the year 1881."

From the published report of said board for the year 1882 (p. 6) it appears that the following resolution was adopted:

"Resolved that in the opinion of this Board the real and personal property of the State is assessed at fifty per cent. of its cash value, for the year 1882."

162 From the published report of said Board for the year 1883 (p. 5) it appears that the following resolution was adopted:

"Resolved that in the opinion of this Board the real and personal property of the State is assessed at fifty per cent. of its cash value for the year 1883."

From the published report of said Board for the year 1890 (p. 5) it appears that the following resolution was adopted:

"Resolved that in the opinion of this Board, the real and personal property of this State, as returned by the local assessors for the year 1890, is assessed at twenty-five per cent. of its fair cash value."

From the published report of said Board for the year 1891 (p. 9) it appears that the following resolution was adopted:

"Resolved that in the opinion of this Board, the real and personal property of this State, as returned by the Local Assessors for the year 1891, is assessed at an average rate not exceeding twenty-five per cent. of its fair cash value."

From the published report of said Board for the year 1893 (p. 10) it appears that the following resolution was adopted:

"Resolved that in the opinion of this Board, the real and personal property of this State, as returned by the Local Assessors for the year 1893, is assessed at an average rate not exceeding twenty-five per cent. of its fair cash value."

As to each of the years from 1873 to 1900, inclusive, except the years expressly above referred to, no resolution similar to those above quoted was adopted: but the reports of said Board for each

163 year show that the column containing the assessment placed by said Board upon the capital stock of corporations, other than railroad companies, is entitled in the following language:

"Net assessment of capital stock, being excess of equalized value over the equalized value of tangible property."

164 Statement showing the capital stock and outstanding bonded indebtedness (as shown by Brown's Directory of American Gas Companies for 1900) of gas companies in Illinois, other than the Peoples Gas Light and Coke Company, together with the equalized value of the tangible property, and the "full value" of the capital stock and franchises of such companies as fixed by the state board of equalization for purposes of taxation in the year 1900.

	Capital stock.	Bonds.	Equalized value of tangible property.	Full value of capital stock and franchises as fixed by board.
Alton Ry. Gas & Electric Co	$500,000	$450,000	$39,276	$201,380
Aurora Gas Light Co	300,000	230,000	.....	25,000
Belleville Gas Light & Coke Co	50,000	17,000		
Union Gas & Electric Co. (Bloomington)	400,000	7,793	.....	163,965
People's Gas & Electric Light Co. (Canton)	50,000			
Centralia Light & Power Co	47,000	.....	5,100	30,500
Urbana & Champaign Gas & Electric Co. (Champaign)	500,000	435	25,045	250,000
Clinton Gas Co. (new Company)	50,000			
Danville St. Ry. & Light Co	700,000	525,000	85,000	425,000
Decatur Gas & Electric Co	400,000	372,000	35,481	250,000
Dixon Power & Lighting Co	100,000	38,500	.....	12,500
Du Quoin Light, Heat & Power Co	50,000	40,000	8,021	45,105
Elgin American Gas Co	100,000	305,000	.....	20,000
Northwestern Gas Light & Fuel Co. (Evanston)	2,000,000	.....	.....	25,000
Freeport Light & Fuel Co	100,000	36,000	5,563	57,815
Galena Gas Light Co	63,000			
Galesburg Gas & Electric Light Co	350,000	350,000	21,199	155,995
Galva Gas Light & Coke Co	30,000			
165 Jacksonville Gas Light & Coke Co	200,000	33,500	19,307	101,535
Joliet Gas Light Co	300,000	285,000	27,744	188,720
Citizens' Gas Co. (Kankakee)	150,000			
Kewanee Light & Power Co	100,000	80,000	6,315	56,575
La Grange Gas Co. (New Company)	100,000			
Peru-La Salle Gas Light & Power Co. (La Salle)	130,000	100,000		
Lincoln Gas Co	100,000	85,000	4,800	90,000
Litchfield Light, Heat & Power Co	50,000	35,000	263	6,315
Macomb Electric Light & Gas Co	50,000			
Mattoon Gas Light & Coke Co	50,000	50,000	.....	12,500
Mendota Light & Heat Co	25,000	8,800	.....	5,000
People's Power Co. (Moline)	300,000	290,000	17,923	115,000
Monmouth Gas Co	30,000	20,000	8,500	42,500
Morris Gas Co	40,000	20,000	1,496	12,480
Murphysboro Water Works, Electric & Gas Light Co	80,000	80,000	10,817	56,586
Ottawa Gas Light & Coke Co	100,000	.....	3,822	24,110
Paris Gas Light & Coke Co	50,000	.....	.....	10,000
Pekin Light, Heat & Power Co	100,000	100,000	7,734	63,670
People's Gas & Electric Co. (Peoria)	500,000	.....	37,422	212,110
Peoria Gas Light & Coke Co	300,000	.....	47,200	236,000
Quincy Gas & Electric Co	600,000	600,000	31,255	300,000
Rockford Gas Light & Coke Co	300,000	485,000	16,754	125,000
Springfield Gas Light Co	75,000	.....	27,264	136,320
Sterling Gas & Electric Light Co	40,000	36,000	5,560	27,800
Streator Gas & Light Co	100,000	60,000	.....	15,000
Citizens' Gas Light & Fuel Co. (Taylorville)	12,280	.....	553	10,000
North Shore Gas Co. (Waukegan)	1,000,000			
Ogden Gas Co. (Chicago)	5,000,000	.....	37,826	239,130
	$15,922,280	$4,782,235	$572,982	$3,948,610

166 *Statement Showing Aggregate Assessments Made by Local Assessors in the Years* 1873 *to* 1900.

1873	$1,210,108,863
1874	1,105,658,176
1875	1,025,428,289
1876	958,405,803
1877	892,380,972
1878	818,987,409
1879	744,742,846
1880	739,462,515
1881	746,034,852
1882	750,635,758
1883	756,422,291
1884	746,547,501
1885	733,533,951
1886	726,178,132
1887	726,078,638
1888	709,304,506
1889	711,515,026
1890	727,549,707
1891	737,504,791
1892	745,754,172
1893	760,837,855
1894	737,989,016
1895	743,840,153
1896	731,215,488
1897	713,443,706
1898	693,443,706
1899	895,869,090
1900	779,513,078

167 *Statement Showing Total Value of Personal Property as Assessed by Local Assessors for the Years* 1873 *to* 1900.

1873	$301,566,517
1874	267,469,471
1875	239,102,189
1876	212,893,542
1877	187,648,455
1878	169,815,099
1879	151,629,963
1880	165,091,710
1881	168,674,777
1882	167,304,024
1883	167,276,876
1884	159,767,095
1885	153,333,048
1886	147,998,610
1887	148,246,088

1888	140,990,725
1889	142,726,240
1890	141,981,057
1891	143,529,274
1892	143,799,494
1893	145,136,023
1894	127,973,857
1895	129,254,545
1896	120,428,916
1897	117,098,946
1898	114,215,007
1899	183,526,987
1900	166,542,866

168 *Statement Showing the Aggregate Value of Lands as Assessed by the Local Assessors During the Years* 1873 *to* 1900.

1873	$643,196,808
1874	586,022,941
1875	552,012,889
1876	522,394,667
1877	491,723,358
1878	447,942,329
1879	412,208,278
1880	398,338,737
1881	399,267,959
1882	395,757,100
1883	394,016,653
1884	389,109,470
1885	380,488,162
1886	371,940,467
1887	365,476,933
1888	352,995,885
1889	348,604,543
1890	345,750,094
1891	343,624,261
1892	339,043,920
1893	338,064,144
1894	334,030,873
1895	332,409,485
1896	329,474,124
1897	323,837,358
1898	319,047,998
1899	315,963,816
1900	309,394,797

169 *Statement Showing the Aggregate Value of Town and City Lots as Assessed by the Local Assessors During the Years* 1873 *to* 1900.

1873	$241,820,362
1874	245,854,685
1875	228,814,552
1876	218,055,488
1877	208,540,957
1878	197,031,558
1879	177,567,698
1880	173,260,959
1881	176,023,751
1882	185,592,977
1883	193,063,755
1884	195,642,562
1885	197,741,226
1886	203,835,559
1887	210,112,460
1888	213,400,542
1889	218,332,464
1890	237,654,199
1891	249,141,918
1892	260,408,429
1893	275,029,263
1894	273,693,566
1895	280,074,344
1896	279,307,191
1897	270,633,137
1898	258,323,686
1899	393,262,409
1900	300,913,328

170 *Statement Showing Aggregate Assessment on Town and City Lots in Cook County as Assessed by the Local Assessors During the Years* 1873 *to* 1900.

1873	$90,447,759
1874	100,689,670
1875	97,795,613
1876	96,789,412
1877	94,637,338
1878	95,374,127
1879	85,791,192
1880	85,635,165
1881	87,192,987
1882	95,448,675
1883	101,456,866
1884	103,408,025
1885	107,295,606
1886	112,994,128
1887	119,437,668
1888	123,132,781
1889	126,795,669
1890	143,347,119
1891	150,690,710
1892	157,446,400
1893	164,389,327
1894	165,045,268
1895	169,252,421
1896	167,671,344
1897	158,767,689
1898	146,672,035
1899	285,717,467
1900	192,550,863

Comparative Statement Showing State Aggregate Average of the Value of Personal Property as Assessed by Local Assessors for the Years 1873 *to* 1900.

	Horses.	Cattle.	Mules and asses.	Sheep.	Hogs.	Steam engines, including boilers.	Fire or burglar proof safes	Billiard tables, etc.	Carriages and wagons.	Watches and clocks.	Sewing and knitting machines.	Pianos.	Melodeons and organs.
1873....	$52.41	$17.74	$59.09	$1.96	$3.17	$679.05	$105.80	$92.58	$35.86	$6.89	$32.50	$142.95	$60.39
1874....	45.92	15.63	50.39	1.62	2.60	582.67	84.63	75.21	31.22	5.61	25.31	117.63	53.02
1875....	40.95	14.27	45.75	1.51	2.90	504.27	76.83	65.56	27.72	5.65	21.56	102.57	47.22
1876....	36.92	13.37	40.70	1.44	3.35	408.85	65.85	55.86	24.92	4.55	18.32	87.68	41.58
1877....	33.90	12.38	36.92	1.30	2.56	364.89	58.94	43.14	21.94	4.01	14.01	76.43	35.99
1878....	29.63	11.19	32.39	1.15	1.50	321.94	53.30	39.14	18.88	3.62	10.44	67.42	28.95
1879....	26.63	10.15	28.82	1.10	1.36	194.15	45.19	34.23	17.13	3.18	8.42	59.23	24.66
1880....	26.56	9.95	29.77	1.29	1.53	247.99	40.71	30.44	16 56	3.11	7.71	54.68	22.36
1881....	27.66	10.04	31.50	1.29	1.86	236.64	40.23	29.98	17.01	3.00	7.20	52.42	20.55
1882 ..	28.22	10.18	31.17	1.28	2.03	247.88	38.71	31.24	15.34	2.94	6.79	51.12	19.42
1883...	28.89	10.45	32.21	1.25	2.23	240.05	32.56	31.10	14.42	2.83	6.39	49.21	18.20
1884....	28.41	10.13	31.20	1.16	1.85	221.29	33.75	31.02	13.62	2.78	5.97	46.11	16.92
1885....	27.16	9.61	29.26	.99	1.55	205.57	31.92	28.83	12.52	2.62	5.58	45.88	14.89
1886....	26.13	8.84	27.39	.95	1.32	184.78	29.29	27.55	11.72	2.53	5.25	42.39	14.09
1887....	25.80	8.31	26.79	.96	1.48	176.79	28.39	24.92	11.38	2.47	5.12	40.18	13.41
1888....	24.88	7.11	25.03	.96	1.42	167.35	26.50	24.27	10.71	2.39	4.74	38.45	12.46
1889....	24.21	6.59	24.46	.98	1.52	154.37	26.10	23 39	10.10	2.2.	4.53	37.00	11.74
1890....	22.96	6.43	23.44	1.02	1.39	151.97	25.73	22.89	9 67	2.19	4.46	37.16	11.25
1891....	21.96	6.30	22.94	1.07	1.25	149.14	25.82	21.66	9.35	2.16	4.34	34.29	10 51
1892...	20.74	6.07	21.64	1.06	1.26	142.50	25.00	22.09	9.10	2.09	4.23	33.65	10.11
1893....	19.41	6.34	20.69	1.04	1.69	138.51	23.06	21.09	9.15	2.05	4.12	32.63	9.75
1894...	14.87	6.26	16.63	.84	1.43	130.37	21.84	19.31	8.55	1.98	3 98	29.74	9.11
1895....	12.84	6.68	13.84	.85	1.42	125.87	21.22	18.38	8.09	1.92	3.94	29.08	8.63
1896....	11.33	6.49	12.15	.80	1.26	121.88	20.54	18.59	7.83	1.91	3.74	27.49	8.22
1897....	10.49	6.58	11.14	.82	1.29	117.99	20.67	16.91	7.29	1.78	3.59	26.58	7.90
1898....	10.64	6.63	11.69	.86	1.22	112.96	19.40	16.43	7.02	1.72	3.48	25.75	7.36
1899....	8.20	5.03	8.83	.72	.84	94.88	10.16	13.10	4.71	1.64	2.21	19 53	4.95
1900....	9.06	4.92	9.88	.76	1.07	85.99	9.41	7.92	4.45	1.52	1.99	18.09	4.39

172 Twenty-ninth. Said Circuit Court erred in admitting and receiving in evidence, over the objection and exception of Defendants' counsel, the testimony of Edward J. E. Ward, as follows:

I have been familiar for over twenty years with the concern known as the Union Stock Yards and Transit Company; said Company is a very large market for the sale of all sorts of live stock, cattle, hogs, horses and so forth. It is the sole market of the kind in Cook County for cattle, hogs, sheep and live-stock generally. I have procured, under direction, the annual reports of the Union Stock Yards and Transit Company, and from those reports and from other data I have prepared a statement showing the number of cattle, the hogs and horses received at the Union Stock Yards and Transit Company during the year 1899 to 1901 inclusive, the total value of each kind of animals, and average value per head, compiled from those statistics. This paper which I now show you, is that compilation.

(Witness here produced Ward Exhibit B, November 12, 1903.)

From this compilation it appears that during the year 1899, 2,514,446 head of cattle, of a total value of $123,207,854, or an average value of $49 per head, was received; in the same way, for the year 1900, there were 2,729,046 head of cattle, of a total value of $136,452,300, of the average value per head of $50; and in the year 1901, without specifying the name or number of cattle, the average price received was $48 per head. In 1899 the average price per head was $9.74.

173 For the year 1900, the average price per hog received was $11.84; for the year 1901, $13.00. With reference to horses, the average price received in 1899 was $112.50; in 1900, $116; in 1901, $120. All these figures are taken from the annual reports of the Union Stock Yards and Transit Company that have been referred to.

Thirteenth. The said Circuit Court erred in admitting and receiving in evidence, over the objection and exception of defendants' counsel, the document known as Ward Exhibit B, November 12, 1903, which was as follows:

WARD EXHIBIT B. Nov. 12, '03.

Statement showing the number of cattle, hogs and horses sold at the Union Stock Yards, Chicago, during the calendar years 1899 to 1901, inclusive, the total value of each kind of animals and the average value per head. Compiled from the annual Statistical reports of the Union Stock Yard and Transit Company for the years indicated.

Cattle.

Year.	Number of head.	Total value.	Average per head.
1899	2,514,446	123,207,854	$49
1900	2,729,046	136,452,300	50
1901	3,031,396	145,507,008	48

Hogs.

1899	8,177,870	$79,734,233	9.74
1900	8,109,064	96,092,408	11.84
1901	8,290,494	107,776,422	13.00

Horses.

1899	111,611	12,556,237	112.50
1900	99,010	11,485,160	116.00
1901	109,353	13,122,360	120.00

Thirty-first. The said Circuit Court erred in admitting and receiving in evidence over the objection and exception of defendants' Counsel, a report from the Illinois State Board of Agriculture for December 1900, as follows:

"Livestock, Hogs: There is a slight increase in the number of hogs assessed this year over 1899, the number reported being 2,829,960. In the Northern Division of the State there were 1,210,227; in the Central Division 1,138,979; and in the Southern Division 480,754. At the equalized value of $1.07 per head, they were worth $3,028,057.00. The number of corn fed hogs marketed was 2,348,855, or 83 per cent. of the number assessed, and their average live weight was 225. The heaviest hogs marketed were in Northern Illinois, where their average weight was 243 pounds. In the Central Division the average weight was 218 pounds and in the Southern Division 195 pounds. The total live weight of the hogs
175 marketed during the year was 527,833,094. The average price received of $4.35 per cwt. is the highest since 1894 and varied but little in different sections of the State. At this rate the total value of the hogs marketed would be $23,066,408, of which amount Northern Illinois received $10,609,820.00; Central Illinois $9,126,358; and Southern Illinois, $3,330,230.00."

"The following table shows — assessed and marketed in 1899, as well as their weight and value for the last 45 years. For 1899, the

assessors' returns of the number of hogs was 2,796,483, of a value of $2,349,046.00. 83% is the estimated per cent. of the total crop that was marketed. The number of hogs that were marketed in that year was 2,321,060. The total gross weight per head was 234 pounds; the total gross weight, 542,267,060 pounds. The value per cwt. gross, $3.60; and the total value of hogs marketed was $19,658,897.00.

"For the year 1900 the Assessors' returns were 2,829,960 hogs of the value of $3,028,057.00. 83% is the estimated per cent. of the total number that were marketed. The total number that were actually marketed is 2,348,855. The average gross weight per head was 225 pounds. The total gross weight, 527,833,094; the value per cwt. gross, was $4.35, and the total value received, from hogs marketed $23,066,408.00.

"More cattle were reported by the Assessors this year than last, 2,009,598 being returned. Of this number 1,085,050 were in Northern Illinois, 658,663 in Central Illinois, and 265,885 in the Southern Division of the State at the equalized value of $4.92 per cwt., (?) they were worth to the feeder $9,887,222. 23%
176 of the number assessed, or 462,197 were marketed, their average live weight being 1125 pounds. In the Northern Division of the State the average weight of the cattle marketed was 1115 pounds; in Central Illinois 1205 pounds; and in Southern Illinois but 968 pounds. The total weight of cattle marketed was 520,065,373 pounds. The average value of the cattle sold during the year was $4.25; and the total value $22,089,527.00,—the best returns for this class of live stock since 1884. Over half of this amount $11,586,603.00 should be credited to Northern Illinois, $8,209,791.00 to Central Illinois and $2,203,073 to Southern Illinois."

Thirty-second. The said Circuit Court erred in admitting and receiving in evidence, over the objection and exception of Defendants' Counsel, the document known as Ward Exhibit C, November 12, 1903, as follows:

WARD EXHIBIT C. Nov. 12, '03.

Statement Showing the Number of Head of Horses, Cattle and Hogs in the State of Illinois, returned for taxation in 1900 by the Local Assessors, compared with the number of head of Horses, Cattle & Hogs in the State of Illinois, on June 1st 1900 according to United States Census Office returns.

Kind.	Number of head returned by local assessors in Illinois for 1900.	U. S. Census for June 1st, 1900.	Difference.
Horses	1,209,446	1,350,219	140,773
Cattle	2,438,275	3,104,010	665,735
Hogs	2,690,367	5,915,468	3,225,101

177 Thirty-third. The said Circuit Court erred in admitting and receiving in evidence, over the objection and exceptions

of defendants' Counsel, the following evidence admitted into the record between counsel only in the event that the same was competent and material to the issues:

"That the Union Stock Yards and Transit Company now owns and conducts in the City of Chicago a live stock yard and market for the reception, handling, sale and disposition of all kinds of live stock, and has continuously conducted and operated the same since 1865;

That at said market there is received annually a large number of horses, cattle, hogs, sheep and other live stock which are sent to said market to be sold and disposed of to purchasers there gathered from all parts of the United States and Europe;

That such live stock is received from all parts of the United States but chiefly from the territory lying west, north and south of the State of Ohio;

That in the course of business, as conducted at said market, the prices of all live stock sold in said market are recorded in books kept for that purpose by the Union Stock Yards and Transit Company, and that said Union Stock Yards and Transit Company annually and at the end of each calendar year or shortly thereafter compiled and tabulates the result of the trade in said live stock during said year at said market, and the prices realized for the said live stock,

178 which tabulation of values is thereupon by the Union Stock Yards and Transit Company printed and published generally in the form of the annual report heretofore produced and offered in evidence by the complainant at the hearing before the Master on November 12, 1903;

That from the annual report of said Union Stock Yards and Transit Company appears that the total receipts of live stock at said market since its establishment in the year 1865 up to and including the year 1901 were

65,125,851 Head of Cattle.
2,518,278 Calves.
202,197,439 Hogs.
52,142,667 Sheep.
1,644,620 Horses.

That the total sum realized for the live stock so received and sold at the said market during that period was the sum of $5,792,705,549.00."

Thirty-fourth. The said Circuit Court erred in admitting and receiving in evidence over the objections and exceptions of defendants' Counsel the testimony of Williston Fish, as follows:

I am a lawyer, in the employ of the Chicago Union Traction Company. I prepare the schedules of property for the Company for the years 1900, 1902, and 1903. I have made an investigation of the sales of stock and bonds of the Chicago Union Traction Company and the Underlying Companies on the Stock Exchange during the entire existence of the Chicago Union Traction Company, and I have made a memorandum of the amount of such

sales, which is contained in this report. (Referring to Ex-
179 hibit 1 to the deposition of Williston Fish.) I used the yearly reports made by the newspapers called the Economist, published in Chicago, and giving the sales and prices for each year from 1899 to 1903, and I also obtained the reports from the daily papers, published in Chicago during that time. I have an intimate knowledge of the affairs of the Company and the market quotations for the last four years of the stocks and bonds of the Chicago Union Traction Company, and its underlying companies, on the stock exchange, do not give a fair indication of the real value of the property of said company. I have spent about a third of my time since 1899, in making inventories, and examining the tangible personal property of said Chicago Union Traction Company and the underlying Companies. On April 1st, 1900, all of the property of the Chicago Union Traction Company, including realty and personalty and franchises was worth less than $27,000,000, and all the property of the underlying companies at the same time was worth $12,242,972.12.

Thirty-fifth. The said Circuit Court erred in admitting and receiving in evidence, over the objection and exception of Defendants' Counsel, the document known as Exhibit 1 of the testimony of W. Fish, 11/25/03 as follows:

The following statement shows the high and low values on the Chicago Stock Exchange and the Amounts dealt in of the stocks and bonds named, in each of the years 1899, 1900, 1901, 1902, and in 1903 up to November.

180 Chicago Union Traction Company.

Common Outstanding, 20,000.

	Date low.	Low.	High.	Date high.	Sales.
1899	Dec. 22	23	39	Aug. 25	40,066
1900	Dec. 15	8½	29½	Jan. 5	47,577
1901	May 9	9½	20⅞	May 28	126,544
1902	Jan. 16	10	22⅕	Apr. 29	134,032
1903	June 19	3½	17	Jan. 13	23,245

181 Chicago Union Traction Company.

Preferred Outstanding, 12,000,000.

	Date low.	Low.	High.	Date high.	Sales.
1899	Dec. 22	72	87¾	Aug. 31	28,158
1900	Dec. 15	40	78¼	Jan. 2	45,211
1901	Dec. 19	47	61½	June 7	41,222
1902	Dec. 23	45	59½	Apr. 29	19,420
1903	Apr. 22	26	51	Jan. 13	8,365

182 West Chicago Street Railway Company.

Issued	13,189,000
Owned by C. U. T. Co	3,216,000
Outstanding	9,973,000

Year.	Date low.	Low.	High.	Date high.	Sales.
1899	Jan. 3	91⅝	124¼	Sept. 1	127,989
1900	Dec. 22	96½	113	Feb. 5	31,405
1901	Nov. 21	90	108	Mar. 15	30,108
1902	Dec. 15	83	103¼	May 2	14,680
1903	Oct. 10	50	93	Jan. 14	8,717

183 North Chicago Street Railroad Company.

Stock issued	7,920,000
Owned by C. U. T.	2,022,600
Outstanding	5,897,400

Year.	Date low.	Low.	High.	Date high.	Sales.
1899	Jan. 24	217	250½	May 1	20,256
1900	Dec. 26	190	228	Feb. 7	3,729
1901	Dec. 2	180	207	Mar. 1	4,694
1902	Dec. 22	158	199¾	Apr. 29	4,917
1903	Oct. 5	95	175	Jan. 14	4,122

184 Chicago Consolidated Traction Company.

4½'s, $—.

Year.	Date low.	Low.	High.	Date high.	Sales.
1899					
1900					
1901					
1902	Feb. 11	67	80	Mar. 27	219,000
1903	Oct. 20	60	70½	Apr. 2	136,000

185 North Chicago Street Railroad Company.

First Mortgage, 5's, 1906 { Total, 1906 & 1909, $3,171,000.

The 1906's are:

Year.	Date low.	Low.	High.	Date high.	Sales.
1899	July 21	105½	108½	Oct. 27	23,500
1900	Dec. 31	104⅜	105⅛	Dec. 19	16,000
1901	Oct. 4	104	104½	July 3	10,500
1902	Feb. 28	103	103	May 5	31,500
1903	June 4	97	100	Mar. 9	19,000

The 1909's are:

1899					
1900	Nov. 19	105⅞	106¾	May 16	24,000
1901	Oct. 9	106	106½	Aug. 6	19,000
1902	Apr. 2	104	104¼	Feb. 24	11,000
1903	June 5	97	99½	Mar. 26	9,000

186 North Chicago City Railway Company.

4½'s, 2,500,000.

Year.	Date low.	Low.	High.	Date high.	Sales.
1899	Nov. 21	107	109¾	July 14	23,000
1900	Feb. 9	107⅛	108¾	June 5	54,000
1901	Dec. 17	105	108⅛	May 21	53,000
1902	Aug. 1	105	107	Apr. 10	14,000
1903	May 7	98	103	Jan. 29	12,000

187 West Chicago Street Railroad Company, Consolidated.

5's, $6,114,000.

Year.	Date low.	Low.	High.	Date high.	Sales.
1899	Jan. 3	94¾	107½	July 12	2,924,000
1900	Dec. 17	100	104½	Jan. 5	900,000
1901	Dec. 26	98⅞	104½	Apr. 13	749,500
1902	Dec. 11	94	101½	Apr. 4	340,000
1903	Sept. 12	80	97¼	Jan. 14	135,000

188 West Chicago Street Railroad Company.

Debenture 6's, $497,000.

Year.	Date low.	Low.	High.	Date high.	Sales.
1899	Mar. 6	100	102	June 14	158,000
1900	July 19	100	100½	Oct. 30	89,000
1901	Nov. 25	100	100¾	Sept. 4	37,000
1902	Sept. 23	99½	100¼	May 5	9,000
1903	May 31	87	106	Jan. 13	19,000

189 West Chicago Street Railroad Company.

1st Mortgage, 5's.

Year.	Date low.	Low.	High.	Date high.	Sales.
1899	Apr. 11	109	112	July 13	104,000
1900	Jan. 20	108	111½	June 21	111,000
1901	Dec. 14	109½	111	May 13	123,000
1902	Dec. 29	104¾	109½	May 1	141,000
1903	July 23	96	104	Feb. 25	78,000

190 Chicago West Division Railway Company.

4,016,000 4½'s.

Year.	Date low.	Low.	High.	Date high.	Sales.
1899					
1900	Apr. 19	107¾	109	Apr. 4	7,000
1901	Oct. 22	108½	110	Mar. 7	6,000
1902	Mar. 24	109½	109½	Nov. 3	5,000
1903	Oct. 1	93	105	Jan. 20	35,000

191 Thirty-sixth. The said Circuit Court erred in admitting and receiving in evidence over the objection and exception of defendants' counsel the testimony of William G. Beale, as follows:—

"I appeared before the State Board of Equalization, and gave to said Board detailed information in reference to the value of the property of the Chicago Edison Company, and handed said Board a pamphlet entitled 'Report of Chicago Edison Company for the fiscal year ending March 31, 1900,' which was offered and received in evidence as Complainant's Exhibit A 10/29/02, H. W. B.; that I compiled the information contained in said report in reference to the value of the capital stock, and the amount of bonded indebtedness. A part of the information I got from direct investigation, and part from public reports, and a part from employing an agent to go out and find the facts.

Thirty-seventh. The said Circuit Court erred in admitting and receiving in evidence over the objection and exception of Defendants' Counsel, the documents marked Complainant's Exhibit A, which document is attached to the bill of complaint in the case of the Chicago Edison Company *vs.* Samuel B. Raymond *et al.*, in the Circuit Court of the United States for the Northern District of Illinois, No. 26,163.

192 Thirty-eighth. The said Circuit Court erred in admitting and receiving in evidence over the objection and exception of defendants' counsel, the document entitled Complainant's Exhibit B, which document is attached to the bill of complaint in the case of the Chicago Edison Company *vs.* Samuel B. Raymond *et al.*, now pending in the Circuit Court of the United States for the Northern District of Illinois, No. 26,163.

Thirty-ninth. The said Circuit Court erred in admitting and receiving in evidence, over the objection and exception of defendants' counsel, the testimony of Arthur D. Wheeler, as follows:

"I appeared before the State Board of Equalization while it had under consideration the proper capital stock assessment for the Chicago Telephone Company for the year 1900, and answered questions and gave information to said Board, concerning the capital stock valuations of said Company. One of the members of the Capital Stock Committee of the Board stated that the Committee could not or would not act until they had received word as to the wishes or ideas of the Court. At about this stage one of the attorneys for the relators in the Mandamus proceeding came into Court with a paper in his hand, and I was ushered out, and fifteen or thirty minutes after that the Committee reported the assessment against the Chicago Telephone Company, which was afterwards accepted by the State Board.

193 Fortieth. The said Circuit Court erred in admitting and receiving in evidence over the objection and exception of defendants' counsel, the following evidence of Fred E. Smith:

"The ordinary operation of a street railroad results in a gradual depreciation of its plant. A charge ought to be made every month on account of such depreciation. Such depreciation in the case of the Chicago Union Traction Company amounts to a little over seven and one half per cent. per annum of the entire value of the property. No such depreciation had been charged against the Chicago Union Traction Company on its books. I have prepared a statement of the income and expenses of the Chicago Union Traction Company for the fiscal year ending June 30, 1900. It is that which I hand you. (Referring to Complainant's Exhibit 1, set forth in the Master's report, filed June 9, 1902.) I have made a compilation upon the lines laid down by Judges Grosscup and Humphrey in their opinion, as to what the taxes would amount to if they were fixed at the rate of 8.035. I capitalized the true net income of 2,057,352.61 upon a six per cent. basis, which resulted in a capitalization of $34,289,210.17. I equalized these on a seven per cent. basis, which produces a capitalization of $24,002,447.12; took one-fifth of this for the assessed value, which was $4,800,489.42. As computed on the basis of that rate, 8.035 it produces $385,719.32. I then deducted the taxes

already paid of $239,097.22, leaving the amount to be paid $146,622.10.

194 Forty-first. The said Circuit Court erred in admitting and receiving in evidence, over the objection and exception of Defendants' counsel, Exhibit Number 1, offered and received in evidence in the case of the Chicago Union Traction Company *vs.* Samuel B. Raymond *et al.*, No. 26,609, contained in the Master's Report, filed in said cause, June 9, in the following words:

Chicago Union Traction Company.

Income Account, Year Ending June 30th, 1900.

Income from all sources:

Passenger Receipts	$7,468,797.98	
Chartered Cars	2,122.50	
Mail	6,477.58	
Advertising	33,576.95	
Rent of Land and Buildings	35,622.14	
Rent of Tracks and Terminals	10,000.00	
Interest on Deposits	17,690.11	
Miscellaneous	3,336.03	
Total Income from all sources		$7,577,623.29

Expenses:

Maintenance—Way & Structures	193,666.90	
Maintenance—Equipment	381,082.87	
Transportation	2,836,167.01	
General Expenses	1,119,962.07	
Interest on Loans	41,776.80	
195 Depreciation, being 6% of $9,364,928.57, full value of personal property, said full value being obtained upon the assumption that the Assessors' full valuation of said personal property for the year 1900, to-wit: $6,555,450, was only 70% of real value	561,895.71	
Total Expenses		$5,134,551.36
Net earnings applicable to payment of Bond interest, rentals and taxes		$2,443,071.93
Deducting taxes for 1900, already paid		239,097.22
Leaving net income		2,203,974.71

This amount will be further reduced by the amount of taxes to be paid under the decision rendered by Judges Grosscup and Humphreys."

Forty-second. The said Circuit Court erred in admitting and receiving in evidence, over the objection and exception of Defendants' Counsel oral testimony for the purpose of explaining, varying and contradicting the official acts, records and proceedings of the State Board of Equalization for the years 1900 and 1901, wherein and whereby said Board made the assessment against the property of the complainant sought to be enjoined in this cause.

Forty-third. The said Circuit Court erred in refusing and failing to hold that parol evidence was incompetent, for the purpose of explaining, varying or contradicting the official acts, records and proceedings of the State Board of Equalization of the State of
196 Illinois, in reference to the assessments on the capital stock of the complainant, made by the said board in the year 1901, for the year 1900.

Forty-fourth. The said Circuit Court erred, in failing and refusing to hold that inasmuch as complainant contributed to the expense of said Mandamus suit, instituted in the Circuit Court of Sangamon County, Illinois, against the State Board of Equalization of the State of Illinois, for the purpose of compelling said Board to assess the capital stock of the complainant and the other corporations therein named, for the year 1900, and inasmuch as the complainant participated in directing and controlling the conduct of said litigation, therefore the complainant was concluded by the outcome of said suit, and the proceedings of said State Board of Equalization, and the assessment of the Capital Stock of Complainant for the year 1900, made by the said State Board of Equalization of the State of Illinois, in obedience to said writ of Mandamus, and said Circuit Court erred in failing and refusing to hold, that all of the aforesaid proceedings are *res adjudiciata*, and constitute an estoppel by judgment and verdict against the Complainant, conclusively establishing the validity and regularity of the said assessment complained of in the bill of complaint in this cause.

In all of which respects these defendants claim that the aforesaid judgment and decree of said Circuit Court are erroneous,
197 illegal and invalid, and therefore these defendants pray that the said judgment and decree may be reversed, set aside and held for nought.

HARRY A. LEWIS,
WILLIAM F. STRUCKMAN,
JAMES HAMILTON LEWIS AND
DAVID K. TONE,
Solicitors for the Above-Named Defendants.

(Endorsed:) Filed August 10, 1906, Marshall E. Sampsell, Clerk.

198 And on to-wit: the tenth day of August, being one of the days of the regular July term of said Court, 1906, in the record of proceedings thereof in said entitled cause before the Hon. Peter S. Grosscup, Circuit Judge, appears the following entry to-wit:

Order of August 10, 1906, Allowing Appeal.

26177.

CHICAGO TELEPHONE COMPANY

vs.

SAMUEL B. RAYMOND, County Treasurer Cook County, Illinois, and *ex-Officio* County Collector, Cook County, Illinois, and JOHN J. HANBERG, His Successor in Office as County Treasurer of Cook County, Illinois, and *ex-officio* County Collector of Cook County, Illinois, and *ex-Officio* Town Collector of the Town of South Chicago; and MAURICE FITZGERALD, Town Collector of the Town of South Chicago, and THE CITY OF CHICAGO.

Upon motion of David K. Tone, Esq., solicitor for the defendants, and on filing petition for an order allowing an appeal, together with assignment of errors, It is Ordered that an appeal be and is hereby allowed to the Supreme Court of the United States from the decree entered herein on the twenty-fifth day of July, 1906, and that the amount of the bond upon appeal be and hereby is fixed at the sum of two hundred dollars. Said bond to be approved by the Clerk of this Court.

199 And on to-wit: the fifth day of September, 1906, there was filed in the Clerk's office of said Court in said entitled cause a certain Bond on Appeal in words and figures following to-wit:

200 *Bond on Appeal.*

Know all men by these presents, that we, Samuel B. Raymond, County Treasurer of Cook County, Illinois, and *ex-officio* County Collector of Cook County, Illinois, and John J. Hanberg, his successor in office as County Treasurer of Cook County, Illinois, and *ex-officio* County Collector of Cook County, Illinois, and *ex-officio* Town Collector of the Town of South Chicago, and Maurice Fitzgerald, Town Collector of the Town of South Chicago, and The City of Chicago, as principal, and National Surety Company, as surety, are held and firmly bound unto Chicago Telephone Company, in the full and just sum of Two Hundred ($200.00) Dollars, to be paid to the said Chicago Telephone Company, its certain attorney, successors or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly and severally, by these presents. Sealed with our seals and dated this 30th day of August, in the year of our Lord one thousand nine hundred and six.

Whereas, lately at a session of the Circuit Court of the United States for the Northern District of Illinois, Eastern Division, on July 25th, A. D. 1906, in a suit depending in said Court, between Chicago Telephone Company, complainant, and Samuel B. Raymond, County Treasurer of Cook County, and *ex-officio* County Collector of Cook

County, and John J. Hanberg, his successor in office as
201 County Treasurer of Cook County, Illinois, and *ex-officio* County Collector of Cook County, Illinois, and *ex-officio* Town Collector of the Town of South Chicago, and Maurice Fitzgerald, Town Collector of the Town of South Chicago, and The City of Chicago, defendants, a decree was rendered against the said defendants above named, restraining them from collecting certain taxes levied against the property of complainant, and the said defendants above named, having obtained an appeal to the Supreme Court of the United States and filed a copy thereof in the Clerk's office of the said Court to reverse the decree in the aforesaid suit.

Now, the condition of the above obligation is such, That if the said Samuel B. Raymond, County Treasurer of Cook County, Illinois, and *ex-officio* County Collector of Cook County, Illinois, and John J. Hanberg, his successor in office as County Treasurer of Cook County, Illinois, and *ex-officio* County Collector of Cook County, Illinois, and *ex-officio* Town Collector of the Town of South Chicago, and Maurice Fitzgerald, Town Collector of the Town of South Chicago, and the City of Chicago, shall prosecute their appeal to effect, and answer all damages and costs if they fail to make their plea good, then the above obligation to be void; else to remain in full force and virtue.

S. B. RAYMOND, [SEAL.]
County Treasurer of Cook County and ex-Officio County Collector of Cook County, Illinois.

JOHN J. HANBERG, [SEAL.]
Successor to Samuel B. Raymond as County Treasurer of Cook County, Illinois, and ex-Officio County Collector of Cook County, Illinois, and ex-Officio Town Collector of the Town of South Chicago.

202 MAURICE FITZGERALD, [SEAL.]
Town Collector of the Town of South Chicago.

[SEAL.] CITY OF CHICAGO,
By E. F. DUNNE, *Mayor.*

Attest:
A. C. ANSON, *City Clerk.*

NATIONAL SURETY COMPANY,
[SEAL.] CHARLES S. CRAIN,
Attorney in Fact.

Approved:
MARSHALL E. SAMPSELL, *Clerk.*

(Endorsed:) Filed Sep. 5, 1906. Marshall E. Sampsell, Clerk.

203 UNITED STATES OF AMERICA,
Northern District of Illinois, Northern Division, ss:

In the Circuit Court of the United States, Northern District of Illinois, Northern Division.

In Chancery. No. 26177.

CHICAGO TELEPHONE COMPANY
vs.
MAURICE FITZGERALD ET AL.

204 2:00 P. M. March 3, 1904, adjourned to new notice.

10:00 A. M. April 11, 1904,
Parties met pursuant to notice, and adjourned to 10.00 A. M. April 14, 1904.

10.00 A. M. April 14, 1904, adjourned to 2.00 P. M. April 18, 1904.

2.00 P. M. April 18, 1904.
Adjourned to 2.00 P. M. Tuesday, April 26, 1904.

2.00 P. M. Tuesday, April 26, 1904.
Continuation pursuant to adjournment.
Present: On behalf of Complainant: Mr. Walter D. Herrick, representing Holt, Wheeler & Sidley. On behalf of defendants: Mr. Wilkerson, Mr. Shepard, Attorney General Hamlin.

Mr. SHEPARD: It is stipulated and agreed by and between the parties thereto that on February 1, 1900, the authorized capital stock of the Chicago Telephone Company was increased from $5,000,000 to $15,000,000.

205 That on April 1, 1900, there was outstanding stock to the amount of $5,000,000, composed of 50,000 shares of $100 par value each;

That during the year 1900, 1076 shares were sold at prices ranging from $180. to $245. per share upon the Chicago Stock Exchange, that being the only place in which public quotations of the stock were given, or public place where this stock was sold;

That 945 of the shares sold were at prices varying from $150. to $225. per share; while the remaining 131 shares sold at prices ranging from $237.50 to $245.00 per share.

Mr. WILKERSON: We offer in evidence the following portions of the Abstract of Record in the case of the State Board of Equalization, *et al., vs.* People of the State of Illinois, etc., already produced by counsel for the Complainant, the statement with reference to the Chicago Telephone Company appearing on page 115 of the Abstract;

Also, the report of the Chicago Telephone Company appearing on pages 130, 131, and 132, of the Abstract;

Also the report of the Chicago Telephone Company appearing on page 133 of the Abstract;

Also, certified copy of the rules of the State Board of Equalization, appearing on pages 186, 187, 188, and 189 of the Abstract;

Also, the deposition of A. W. Miller appearing on page 175 of the Abstract;

Also, the deposition of Philip Knopf appearing on pages 175 and 176 and 177 of the Abstract;

Also, the statements of the Chicago Telephone Company to the State Board of Equalization, appearing on pages 204, 269 and 276, of the Abstract;

It is stipulated that these portions of this record may be treated with the same effect as if the witnesses were themselves produced and examined in this case, and the original documents themselves produced; the Complainant reserving the right to object on the grounds of irrelevancy or immateriality.

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(Said portions of said Abstract thus offered in evidence are in words and figures as follows, to-wit:)

Chicago Telephone Company.

Liabilities.

Capital Stock.

Authorized..... $15,000,000. Outstanding..... $6,500,000.

NOTE.—In February, 1900, the amount of capital stock outstanding then being $5,000,000, the directors offered an additional $1,000,000 to old holders at par pro rata, one-half to be paid for April 5 and the remainder October 5. In March, 1900, an extra stock dividend of $1,000,000 was declared payable in April. In October, therefore, $7,000,000 will be outstanding.

Bonds: None.

Dividends: For several years, including 1899, the company paid 12 per cent. a year in 1 per cent. monthly dividends. Beginning with 1900 the dividend period was changed from monthly to quarterly; 3 per cent. for first quarter was paid April 5, 1900. Extra stock dividend of $1,000,000 paid April, 1900, to stockholders of record, March 31, 1900.

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Operations.

	1894.	1895.	1896.	1897.	1898.	1899.
Gross earnings	$1,638,964	$1,759,752	$1,955,829	$2,068,715	$2,307,959	$2,568,715
Operating expenses	1,128,388	1,216,913	1,355,624	1,392,155	1,674,007	1,892,155
Net	$508,576	$542,839	$600,204	$676,560	$633,952	$676,560
Per cent on stock	13.39	14.3	13.84	14.40	14.6	.....
Dividends	455,544	455,544	499,224	520,380	520,380	559,550
Surplus	53,032	87,294	100,980	104,317	113,572	117,010
Per cent operating expense	68.9	69.1	69.3	69.9	72.5	74.7

208

	1899.	1899.
Gross Earnings	$2,307,959.88	$2,668,714.87
Expenses	1,674,000.60	1,992,154.89
Net earnings	$633,952.28	$676,559.98
Dividends Paid	520,380.00	559,550.00
Surplus for Year	$113,572.28	$117,009.00
Capital Stock Outstanding December 31st	$4,386,500.09	$5,000,000.00
Increase during the year	663,600.00	

	1890.	1900.
Gross Revenue	$2,668,714.08	$3,129,238.18
Gross Expense Operation, Taxes and Maintenance	1,992,154.89	2,258,780.24
Net earnings	$676,557.98	$870,457.94
Dividends	559,550.00	749,808.00
Surplus for year	$117,009.96	$120,649.94

Balance Sheet December 31, 1900.

Resources.

Invested in Plant	$7,190,012.10
" " Real Estate and Buildings	932,040.42
Material on Hand	221,338.67
Bonds (Sundry)	10,000.00
Cash	10,030.35
	$8,368,430.63

209

Liabilities.

Capital Stock	$7,000,000.00
Balance of Bill and Accounts Payable and Receivable	637,500.62
Reserve for Taxes, 1900, payable in 1901	73,222.73
Reserve for Deferred Maintenance (to provide for renewal of switchboards and apparatus and for continually accruing depreciation of cables and plant)	463,578.49
Reserve for Unearned Rentals	12,705.39
Reserve for Outstanding Toll Tickets and Car Tickets	5,101.75
Surplus	176,231.64
	$8,368,430.63
For wages to employés	$1,284,376.60
For reconstruction and maintenance of plant	655,297.87
For additional investment in real estate and buildings	300,482.38
For extension of plant	1,363,061.38

CHICAGO, 17 *January*, 1900.

The following figures from books of Auditor will show business of Company for year 1899, in comparison with the previous year:

	1898.	1899.
Gross Earnings	$2,307,959.88	$2,668,714.87
Expenses	1,674,007.60	1,992,154.89
Net Earnings	$633,952.28	$676,559.98
Dividends Paid	520,380.00	559,550.00
Surplus for Year	$113,572.28	$117,009.00
Capital Stock Outstanding December 31st	$4,336,500.00	$5,000,000.00
Increase during the year	663,500.00	

210 The development of the Company's business during 1899 in every department of its work has been unprecedented $1,151,453.88 were paid out for wages during the year.

In view of the great interest in Illinois during the past year and especially at the present time on the subject of taxation, you will be interested to know something of what this company does and pays in addition to regular annual taxes toward the various governmental and taxing authorities in control throughout its territory: $53,636.17 were paid to the City of Chicago for 1899 under the terms of the Company's ordinance there. Since the ordinance went into effect, in January, 1889, this Company has paid the City a total of $339,889.50. In addition to this cash payment the city is given service and facilities which cost the Company, and are worth to the city, a large amount of money each year. The Company affords all municipalities telephone service, and also pole line provision for police and fire alarm purposes, and very considerable cash value. It has always borne its full share of taxation.

The taxes which are to be paid in 1900 may be very large, owing to arbitrary and unreasonable valuations imposed in some of the taxing districts. The total assessed valuation considerably exceeds the entire capital of the Company. This result was reached by instances such as the following, which are not isolated, but are fair samples of the action taken by Assessors and Board of Review. In one taxing district where the Company had twenty poles, two miles of single wire and one set of telephones at a toll station, the total cost of the poles and wires more than ten years ago not having amounted to $200.00; the fair value scheduled by the Company was raised by the Assessor to $4,500.00. In another somewhat similar case where the fair value was unquestionably less than $100.00 and so scheduled,

211 the Assessor raised the valuation to $2,250. In another township where the total valuation scheduled was $15,032, the Assessor raised the valuation to $81,575, notwithstanding the fact that the schedules were carefully gone over with him and he failed or refused to point out any item of omitted or undervalued property. The Board of Review refused to afford relief.

We do not believe that litigation is the best remedy for such abuses, but prefer to rely upon patient presentation of the unquestioned facts for protection from future acts of injustice. During the first year of the operation of a new revenue law errors may perhaps be accounted for on the ground of ignorance or lack of proper consideration due to the novelty and great pressure of administering a new law.

The telephone has become indispensable in the conduct of modern business. It has proven of exceptional value in Chicago, owing to the immense areas over which the business and social life extend. In the early days of the telephone there were more in use in Chicago than in any other city. The public needs demand not only the best quality of service, but that it shall extend to the most remote parts of the city. The Company believes it to be its duty to supply such needs, not only in Chicago, but in all other portions of the territory in which it operates. In order to do so the investment of a large amount of additional capital will be necessary. Land and Exchange buildings should be acquired in such places as Evanston, Waukegan, Elgin, Aurora, Joliet; and in the course of time, at others. It is understood that the term of the Chicago ordinance expires in about ten years, but your Directors assume that if in good faith the Company proceeds in the making of the large additional investment required to meet the growing needs of the public, the City Council of Chicago will in due time grant an extension of the ordinance upon equitable terms.

Your Board of Directors submit for your consideration a proposition increasing the authorized Capital Stock of the Company
212 $10,000.00. If this shall receive your approval the new capital will be called in from time to time as funds may be needed for improving and extending the plant.

Said Exhibit "19" shows:

Office of Chicago Telephone Company.

CHICAGO, *January* 16, 1901.

The following figures from the books of the Auditor will show the business of the Company for the year 1900, in comparison with the previous year:

	1899.	1900.
Gross revenue	$2,668,714.87	$3,129,238.18
Gross Expense (Operation, Taxes and maintenance	1,992,154.89	2,258,780.24
Net earnings	$676,559.98	$870,457.94
Dividends	559,550.00	749,808.00
Surplus for year	$117,009.98	$120,649.94

Capital stock outstanding December 31, 1899, $5,000,000. Twenty thousand shares of new stock were issued during the year, and the proceeds invested in the Company's plant and business, thus leaving Capital Stock outstanding December 31, 1900, $7,000,000.

Balance Sheet December 31, 1900.

Resources.

Investment in Plant	$7,190,012.19
" " Real Estate and Buildings	932,040.42
Material on hand	221,338.67
Bonds (Sundry)	10,000.00
Cash	10,039.35
	8,368,430.65

213

Liabilities.

Capital Stock	$7,000,000.00
Balance of Bills and Accounts Payable and Receivable	637,500.62
Reserve from Taxes, 1900, payable in 1901	73,222.74
Reserved for Deferred Maintenance (to provide for renewal of switchboards and apparatus and for continually accruing depreciation of cables and plant	463,578.49
Reserve for Unearned Rentals	12,795.39
Reserve for Outstanding Toll Tickets and Car Tickets	5,101.75
Surplus	176,231.64
	$8,368,430.63

Among the chief expenditures during the year may be mentioned the following:

For wages to employés	$1,284,576.07
For reconstruction and maintenance of plant	655,297.87
For additional investment in real estate and buildings	309,482.33
For extension of plant	1,363,061.38

214 (Rules of State Board of Equalization, pp. 186 to 189, inc.)

291. Whereas, The fourth clause of section three of "An Act for the assessment of property, and for the levy and collection of taxes," approved March 30, 1872, in force July 1, 1872,—provides as follows:

3. * * * Fourth. The capital stock of all companies and associations now or hereafter created under the laws of this state, shall be so valued by the State Board of Equalization as to ascertain and determine, respectively, the fair cash value of such capital stock, including the franchise, over and above the assessed value of the tangible property of such company or association. Said board shall adopt such rules and principles for ascertaining the fair cash value of such capital stock as to it may seem equitable and just; and such rules and principles when so adopted, if not inconsistent with this act, shall be as binding, and of the same effect as if contained in

this act, subject, however, to such change, alteration or amendments as may be found from time to time to be necessary by said board: Provided, that in all cases where the tangible property or capital stock of any company or association is assessed under this act, the shares of capital stock of any such company or association shall not be assessed or taxed in this clause shall not apply to the capital stock or shares of capital stock or banks organized under the general banking laws of this state; therefore, be it

215 Resolved, That for the purpose of ascertaining the fair cash value of the capital stock, including the franchise, of all companies or associations now or hereafter created under the laws of this state, and for the assessment of the same, or so much thereof as may be found to be in excess of the assessed or equalized value of the tangible property of such companies and associations respectively, we, the State Board of Equalization, hereby adopt the following rules and principles, viz:—

First. The market or fair cash value of the shares of capital stock and the market or fair cash value of the debt (excluding from such debt the indebtedness for current expenses), shall be combined or added together; and the aggregate amount so ascertained shall be taken and held to be the fair cash value of the capital stock, including the franchise, respectively, of such companies and associations.

Second. From the aggregate amount so ascertained as aforesaid, there shall be deducted the aggregate amount of the equalized or assessed valuation of all the tangible property, respectively, of such companies and associations (such equalized or assessed valuation being taken in each case, as the same may be determined by the equalization or assessment of property by this board), and the amount remaining, in each case, if any, shall be taken and held to be

216 the amount and fair cash value of the capital stock, including the franchise, which this board is required by law to assess respectively, against companies and associations now or hereafter created under the laws of this state.

Resolved, That for the purpose of ascertaining the fair cash value of the capital stock, including the franchise, of all companies or associations now or hereafter created under the laws of this State, and for the assessment of the same, or so much thereof as may be found to be in excess of the assessed or equalized value of the tangible property of such companies and associations, respectively, we, the State Board of Equalization, hereby adopt the following rules and principles, viz:

First. The market or fair cash value of the shares of capital stock, and the market or fair cash value of the debt, to be determined by reference to the Stock Exchange or the books of said corporations, and the returns made to the State Board, or other means (excluding from such debt the indebtedness for current expenses), shall be combined or added together, and the aggregate amount so ascertained, shall be taken and held to be the fair cash value of the capital stock, including the franchise, respectively, of such companies and associations.

Second. From the aggregate amount ascertained as aforesaid,

there shall be deducted the aggregate amount of the equalized
217 or assessed valuation of all tangible property, respectively, of such companies and associations (such equalized or assessed valuation being taken, in each case, if any, shall be taken and held to be the amount and fair cash value of the capital stock, including the franchise, which this board is required by law to assess, respectively, against companies and associations now or hereafter created under the laws of this state.

Resolved, That for the purpose of ascertaining the fair cash value of the capital stock, including the franchise, of all companies and associations now or hereafter created under the laws of this state, and for the assessment of the same, or so much thereof as may be found to be in excess of the assessed or equalized value of the tangible property of such companies and associations, respectively, we, the State Board of Equalization, hereby adopt the following rules and principles, viz:—

First. The capital stock of each said company or association shall be valued as an entirety, due consideration being given to the following propositions:

a. To the character and duration of the franchise of said company or association.

b. To the amount of the contribution (if any) demanded of and paid by said company or association under the provisions of any contract or ordinance, to any municipality, as compensation for the use of its franchise privileges in said municipality.

218 *c.* The highest and the lowest quotations of the shares of stock of said company or association during the twelve months immediately preceding the date of assessment and the number of shares of stock sold at such quotations.

d. Any other fact or condition or circumstance that will assist in arriving at a just, equitable, fair cash value of said capital stock.

Second. From the aggregate amount ascertained as aforesaid, there shall be deducted the aggregate amount of the equalizd or assessed valuation of all the tangible property, respectively, of such companies and associations wherever the same may be located (such equalized or assessed valuation of its Illinois property, being taken in each case, as the same may be determined by the equalization or assessment of property by this board), and the amount remaining in each case, if any, shall be taken and held to be the amount and fair cash value of the capital stock, including the franchise, which this board is required by law to assess, respectively, against companies and associations now or hereafter created under the laws of this state.

Third. The above and foregoing are declared to be the only existing rules and principles adopted by this board for its government in the assessment of the capital stock of companies or associations.

The yeas and nays being called for, those voting in the affirmative were:—

219 Barnes, Cadwallader, Cruttenden, Hirsheimer, Leavitt, Long, Martin, McAnsh, McKenna, McKnight, Pierce, Robeson, Rogers, Simon, Severin, Taylor, Wall and Works—18 votes.

There being no negative votes, the resolution was declared carried.

220 *Deposition of A. W. Miller, Called as a Witness on Behalf of Petitioner.*

I am a member of the Board of Cook County Assessors. I have been a member of the Board of Cook County Assessors two years and three months. I have seen the printed sheet of the companies mentioned in the petition in this case. My attention was first called to one of these sheets about the 1st of June last year. To the best of my knowledge none of these corporations filed any capital stock schedules with us. That is during the year 1900. All corporations that did not file schedules with our board of assessors, the board made schedules for them, and all schedules were turned over to the county clerk. I mean the return or statement of capital stock for purpose of capital stock taxation. Returns that we made out, were made out, as far as I can remember, for all of the companies on that list, to the best of my knowledge.

Deposition of Philip Knopf, Called as a Witness on Behalf of Petitioner.

I am County Clerk of Cook County; have been County Clerk of Cook County about six years and a half. With reference to the capital stock returns or statements and schedules concerning
221 the twenty-three corporations on the printed list that is being used in this case I sent them to the State Board of Equalization at Springfield, that is all, when they were filed in my office. I have not seen this printed list that is on the table. (List read to witness.) The schedules for them may have been all made, and not any. There are several hundred filed in the office. I don't remember what they were. My office received certain statement with reference to capital stock from the Board of Assessors, and as to all of those statements and the schedules received by me from the Board of Assessors, I sent them to Springfield. Not only from the Board of Assessors, but from the individual corporations, too, you know; I get some from the corporations outside of the Board of Assessors. I send them to State Board of Equalization. I think sent to the Auditor, I think he is chairman of the board, *ex-officio* chairman, I think; I ain't sure about that.

Cross-examination:

I received back from the Auditor of Public Accounts of the State certified results of the assessments of corporations made by the State Board of Equalization for the year 1900. And also results of the equalization of assessments made by local assessors. I received these as County Clerk of Cook County; that is the way we
222 spread the taxes. The assessment made by the State Board of Equalization of the corporations in Cook County assessed by them and all assessments of property in Cook County.

Mr. GREENACRE: You are making him your witness, you intend to have it that way?

Mr. MILLER: You can save an objection if you want to..

(Objected to as not cross-examination.)

And when I got these certificates or statements of the assessment by the State Board of Equalization and also of the results of the equalization of assessments from the Auditor of Public Account. I extended the taxes for the year 1900. And I made the warrants and the books for the collection and delivered them to the collectors as required by law for the taxes 1900.

223 State Board of Equalization, Springfield, Ill.

GENTLEMEN: We inform you that Chicago Telephone Company paid the City of Chicago last year (1899) a little over $56,000 as a franchise charge under ordinance in addition to all taxes. This is five per cent. on $1,120,000.

We respectfully request your consideration to this fact.

Amount of capital stock authorized, $15,000,000; number of shares into which said capital stock is divided, 150,000. The amount of capital stock paid up, $5,000,000; number of shares actually issued, $50,000. Market value of the shares of stock, variable; if no market value, then the actual value $——.

The total amount of all indebtedness, except the indebtedness for current expenses, excluding from such expenses the amount paid for the purchase or improvement of property $—.

The assessed valuation of lands, $—; of lots, $465,590; personal property, $3,283,200. Total assessed valuation of all tangible property of said company, $3,748,790.

Subscribed and sworn to November 12, 1900, by C. E. Moseby secretary.

224 *Statement by Chicago Telephone Company, J. H. Paddock, Special Agent, of Capital Stock, etc., as Required by Sec. 32 for* 1899.

Name of company or association, Chicago Telephone Company, Location of company or association, Chicago, Ill.

Amount of capital stock authorized		$5,000,000
No. of shares into which said capital stock is divided	No.	50,000
The amount of capital stock paid up		4,336,500
No. of shares actually issued Apr. 1, 1899		43,365
Market value of the shares of stock, as per books, par		
If no market value, then the actual value		

The total amount of all indebtedness, except the indebtedness for current expenses, excluding from such expenses the amount paid for the purchase or improvement of property.

The assessed valuation of:

Lands	$	
Lots	$486,818.50	
Personal property	4,057,166.	$4,543,984.50
Total assessed valuation of all tangible property of said company		908,797.
One-fifth thereof being		

225 EXHIBIT "69."

Statement by Chicago Telephone Co. of Capital Stock, etc., as Required by Sec. 32, for 1898.

Name of Company or association, Chicago Telephone Co. Location of company or association, 203 and 205 E Washington St. Principal office or place of business, in the City of Chicago, School District No. — T. — R. —.

Amount of capital stock authorized	$5,000,000
No. of shares into which said capital stock is divided	50,000
The amount of capital stock paid up	4,336,500
No. shares actually issued	43,365
Market value of the shares of stock	Book Par.
If no market value then the actual value	As fr.

The total amount of all indebtedness, except the indebtedness for current expenses, excluding from such expenses the amount paid for the purchase or improvement of property.

The assessed valuation of:

Lands	$
Lots	48,000
Personal property	302,000
Total assessed valuation of all tangible property of said company	350,000

226 Adjourned to 2:00 P. M., Tuesday, May 3, 1904.

2.00 P. M. Tuesday, May 3, 1904.
Adjourned to 2.00 P. M., Tuesday, May 10, 1904.

2.00 P. M., Tuesday, May 10, 1904.
Adjourned to 2.00 P. M., Tuesday, May 17, 1904.

* * * * * * *

(Endorsed:) Filed Nov. 19, 1904, Marshall E. Sampsell, Clerk.

227 NORTHERN DISTRICT OF ILLINOIS, *Eastern Division, ss:*

I, Marshall E. Sampsell, Clerk of the Circuit Court of the United States for the Northern District of Illinois, do hereby certify the above and foregoing, consisting of 24 type-written pages to be a true and complete copy of pages 383 to and including page 407, of the Master's Report filed in said Court on the nineteenth day of November, 1904, in the cause entitled Chicago Telephone Company *vs.* Samuel B. Raymond, *et al.* General Number 26,177, as the same appears from the original Report now remaining in my custody and control.

In Testimony Whereof, I have hereunto set my hand and affixed the seal of said Court at my office in the City of Chicago, in said District, this 27th day of September, 1906.

[Seal Circuit Court U. S., Northern Dist. Illinois, 1855.]

MARSHALL E. SAMPSELL, *Clerk.*

228 And on to-wit the twenty sixth day of September, 1906, there was filed in the clerk's office of said court in said entitled cause a certain Stipulation in words and figures following to-wit:

In the Circuit Court of the United States, Northern District of Illinois, Eastern Division Thereof.

In Chancery. No. 26177.

CHICAGO TELEPHONE COMPANY, Complainant,

vs.

SAMUEL B. RAYMOND, County Treasurer of Cook County, Illinois, and *ex-Officio* County Collector of Cook County, Illinois, and JOHN J. HANBERG, His Successor as County Treasurer of Cook County, Illinois, and *ex-Officio* County Collector of Cook County, Illinois, and *ex-Officio* Town Collector of the Town of South Chicago, and THE CITY OF CHICAGO, Defendants.

It is hereby stipulated between Samuel B. Raymond, County Treasurer of Cook County, Illinois, and *ex-officio* County Collector of Cook County, Illinois, and John J. Hanberg, his successor as Treasurer of Cook County, Illinois, and *ex-officio* County Collector of Cook County, Illinois, and *ex-officio* Town Collector of the Town of South Chicago, and The City of Chicago, appellants, and Chicago Telephone Company, appellee, that a complete Transcript of the Record in the case of the Chicago Union Traction Company *vs.* Samuel B. Raymond, County Collector, *et al.*, No. 26609, in the Circuit Court of the United States, for the Northern District of Illinois, as per præcipe now on file with the Clerk of said Court, shall be filed in the Supreme Court of the United States by counsel for appellants.

229 And it is further stipulated that the Clerk of said Circuit Court may prepare and transmit to the Clerk of the Supreme Court of the United States at Washington, D. C., the following pleadings, proceedings and papers, which are different in this cause from the corresponding pleadings, proceedings and papers in said cause of the Chicago Union Traction Company *vs.* Samuel B. Raymond *et al.*, No. 26609:—

1st. Bill of complaint, filed February 21st, 1902;

2nd. Answer of the defendants, filed June 28th, 1902;

3rd. Master's report, filed June 9th, 1902, together with the depositions of all witnesses filed on said 9th day of June 1902, and attached to said Master's report, together with all exhibits accompanying the same;

4th. Answer of City of Chicago, filed May 19th, 1906;

5th. Final decree, entered July 25, 1906;

6th. Order entered August 10th, 1906, correcting final decree as of July 25th, 1906;

7th. Petition for appeal and assignment of errors of defendants, filed August 10th, 1906;

8th. Appeal bond of defendants, filed September 5th, 1906;

9th. Pages 383 to 407 both inclusive, of the deposition of witnesses and exhibits accompanying the Master's report filed in the cause of Chicago Telephone Company *vs.* Samuel B. Raymond *et al.*, No. 26,177, on November 19th, 1904.

And, inasmuch as many of the papers, pleadings, proceedings, and orders in this cause are identical with the corresponding papers, pleadings, proceedings and orders in said cause of the Chicago Union Traction Company *vs.* Samuel B. Raymond *et al.*

230 & 231 Now, it is hereby further agreed that for the purpose *pf* considering this appeal, the Transcript of the Record in this cause to be used in the Supreme Court of the United States shall consist of the papers, pleadings, proceedings and orders contained in the Transcript of the Record filed in the said cause of the Chicago Union Traction Company *vs.* Samuel B. Raymond *et al.*, in the Supreme Court of the United States, which it is hereby agreed is identical with the corresponding pleadings, papers, proceedings and orders had in this cause, except in so far as the transcript in this cause has been made up by filing a transcript of the papers, records, proceedings and orders above specifically enumerated. Provided, however, that either party hereto may at any time take up to said Supreme Court by Supplemental Transcript of the Record, any and all other papers, pleadings, proceedings or orders, had in this cause in the said Circuit Court and not above specifically enumerated.

And it is further stipulated that the printed Transcript of the Record in this cause may be made up as follows: the pleadings, proceedings and papers in this cause shall be printed in their order, except where such pleadings, proceedings or papers consist of the record filed in the said cause of the Chicago Union Traction Company *vs.* Samuel B. Raymond *et al.*, when, instead of printing the said record of said last mentioned cause in full in the places where the same belongs, reference shall be made to the page in the printed transcript of the Record in said cause of the Chicago Union Traction Company *vs.* Samuel B. Raymond *et al.*, on which is printed said corresponding pleading, proceeding or paper, and a complete printed transcript of the record in said cause of the Chicago Union

232 Traction Company *vs.* Samuel B. Raymond, *et al.* shall be attached to and bound in with said printed Transcript of the Record in this cause.

CHICAGO TELEPHONE COMPANY,
By HOLT, WHEELER & SIDLEY, *Its Solicitors.*
CITY OF CHICAGO,
SAMUEL B. RAYMOND,
County Collector, and all other Defendants,
By HARRY A. LEWIS,
WM. F. STRUCKMANN,
JAMES HAMILTON LEWIS AND
DAVID K. TONE,
Their Solicitors.

(Endorsed:) Filed Sep. 26, 1906 Marshall E. Sampsell, Clerk.

233 And on to-wit: the twenty-sixth day of September, 1906, there was filed in the cderk's office of said Court in said entitled cause a certain Stipulation extending time to file transcript of record in Supreme Court. Said Stipulation is in words and figures following to-wit:

Stipulation Extending Time to File Transcript of Record.

In the Circuit Court of the United States, Northern District of Illinois, Eastern Division

No. 26177.

CHICAGO TELEPHONE COMPANY, Complainant,
vs.
SAMUEL B. RAYMOND ET AL., Defendants.

It is hereby stipulated between the parties to the above entitled cause, by their respective counsel, that the defendants' and appellant's time for filing a transcript of record in the above entitled cause, in the Supreme Court of the United States, be extended for twenty (20) days, that is, up to and including the 29th day of September, 1906.

HOLT, WHEELER & SIDLEY,
Counsel for Complainant.
HARRY A. LEWIS,
WM. F. STRUCKMANN,
JAMES HAMILTON LEWIS AND
DAVID K. TONE,
Counsel for Defendants.

(Endorsed:) Filed Sept. 26, 1906, Marshall E. Sampsell, Clerk.

234 NORTHERN DISTRICT OF ILLINOIS, *Eastern Division, ss:*

I, Marshall E. Sampsell, Clerk of the Circuit Court of the United States for the Northern District of Illinois, do hereby certify the above and foregoing to be a true and complete transcript of the proceedings had of record in said Court made in accordance with Stipulation filed in the cause entitled Chicago Telephone Company *vs.* Samuel B. Raymond, County Treasurer, Cook County, Illinois, and *ex-officio* County Collector, Cook County, Illinois, and John J. Hanberg, his successor in office as County Treasurer of Cook County, Illinois, and *ex-officio* County Collector of Cook County, Illinois, and *ex-officio* Town Collector of the Town of South Chicago, and Maurice Fitzgerald, Town Collector of the Town of South Chicago and The City of Chicago, General Number 26,177, as the same appear from the original records and files of said Court now remaining in my custody and control.

In Testimony Whereof, I have hereunto set my hand and affixed the seal of said Court at my office in the City of Chicago, in said District, this 27th day of September, 1906.

[Seal Circuit Court U. S., Northern District Illinois, 1855.]

MARSHALL E. SAMPSELL, *Clerk.*

Endorsed on cover: File No. 20,394. N. Illinois C. C. U. S. Term No. 429. Samuel B. Raymond, county treasurer of Cook county, Illinois, and *ex-officio* county collector of Cook county, Illinois, John J. Hanberg, his successor as such county treasurer and county collector, *et al.*, appellants, *vs.* Chicago Telephone Company. Filed October 2d, 1906. File No. 20,394.

In the Circuit Court of the United States,

Northern District of Illinois,

Northern Division.

Wednesday, April 30th, 1902.

Present: Honorable Christian C. Kohlsaat, District Judge.

Chicago Telephone Company
vs.
Maurice Fitzgerald *et al.* } 26177.

The motion of the complainant for a temporary injunction coming on to be heard upon the bill of complaint, after argument the court finds that the new assessment made by the State Board of Equalization upon the capital stock and franchise of the complainant in this cause in the year 1901 for the year 1900, was and is illegal and void; and the court also finds that the complainant should pay an additional amount of taxes for the year 1900, and for the purpose of ascertaining the amount of such additional taxes for the year 1900 which should be paid by complainant, it is ordered that this cause be referred to Henry W. Bishop, one of the Masters in Chancery of this court.

Said Master is directed to ascertain and determine the amount of said additional taxes upon the following basis:

The full value of the complainant's capital stock on April 1st, 1900, shall be ascertained by capitalizing the true net earnings of complainant therefrom in its fiscal year covering April 1st, 1900, upon a ratio or

basis of six per cent. (6%) that is to say; said full value shall be taken to be sixteen and two-thirds times said net earnings. From this full value shall then be deducted the assessed value of complainant's property located outside of the State of Illinois. The remainder shall be equalized by deducting thirty per cent. therefrom and the then remainder shall be divided by five to obtain one-fifth of the equalized value of the capital stock, and from the quotient there shall be deducted the equalized assessed value of tangible property assessed by the local assessors for the year 1900. This remainder shall be taken as the net assessment of capital stock, being the excess of equalized value of capital stock over the tangible property assessed by the local assessors upon which complainant should pay taxes for the year 1900. There shall then be deducted therefrom the amount of the net assessment of capital stock upon which complainant has paid taxes for 1900 and upon the remainder so ascertained taxes at the true rate for the year 1900 (exclusive of interest and penalties) not exceeding 8.37 per cent. shall be computed or extended and the amount of the taxes so ascertained will be the sum to be reported by the Master as the additional taxes which should be paid by complainant for the year 1900.

It is further ordered that in ascertaining the true net earnings of complainant for the year 1900 a deduction for depreciation from the gross earnings for that year shall be made of at least six per cent. from the value of its personal tangible property April 1st, 1900, and also of the amount of additional taxes for the year 1900 which should be paid by complainant as ascertained under this order of reference.

IN THE CIRCUIT COURT OF THE UNITED STATES,

Northern District of Illinois,

Northern Division.

Saturday, June 28th, 1902.

Present: Honorable Peter S. Grosscup, Circuit Judge.

Chicago Telephone Company,
vs.
Maurice Fitzgerald, Town Collector of the Town of South Chicago, and Samuel B. Raymond, County Treasurer of Cook County. } 26,177.

The exceptions to the Master's report filed herein on the tenth day of June, 1902, now coming on to be heard, and the Court having heard arguments of counsel thereon, and being advised in the premises, it is ordered that said exceptions be and they are hereby overruled, and that said Master's report be and it is hereby confirmed.

And the motion of the complainant for a temporary injunction coming on to be heard upon the bill of complaint, and the affidavit attached thereto, and the Master's report, it is ordered that upon the complainant paying Seven Thousand Two Hundred Sixteen Dollars and Ninety-five Cents ($7,216.95) to the County Treasurer of Cook County, Illinois, Ex-Officio County Collector, a temporary writ of injunction issue in accordance with the prayer of the bill in this cause.

UNITED STATES OF AMERICA,
NORTHERN DISTRICT OF ILLINOIS, } ss.
EASTERN DIVISION.

I. H. S. Stoddard, Clerk of the Circuit Court of the United States, for said Northern District of Illinois, do hereby certify the above and foregoing to be true and complete copies of the following papers:—

Order entered of record in said Court on the 30th day of April, 1902, in the cause wherein Chicago Telephone Company is the complainant, and Maurice Fitzgerald, *et al.*, are the defendants, Gen. No. 26177; and also

Order entered of record in said Court on the 28th day of June, 1902, in the cause wherein Chicago Telephone Company is the complainant, and Maurice Fitzgerald, Town Collector of the Town of South Chicago, and Samuel B. Raymond, County Treasurer of Cook County, Gen. No. 26,177, as the same appears from the original files and record in said cause now remaining in my custody and control.

In Testimony Whereof, I have hereunto set my hand and affixed the seal of said Court at my office in Chicago, in said District, this 4th day of April, A. D. 1907.

H. S. STODDARD.

(Seal) *Clerk.*

IN THE

SUPREME COURT OF THE UNITED STATES,

OCTOBER TERM, A. D. 1906.

Samuel B. Raymond, County Treasurer of Cook County, Illinois, *et al.*, *Appellants*,
vs.
Chicago Telephone Company, *Appellee.*
} No. 429.

NOTICE OF MOTION TO ADVANCE AND SET DOWN FOR HEARING.

To:

HOLT, WHEELER & SIDLEY,
Solicitors for Chicago Telephone Company.

Please take notice that on Monday, the 10th day of December, 1906, we shall appear before the Supreme Court of the United States in the City of Washington, D. C., at the opening of court on said day, or as soon thereafter as counsel can be heard, and move that the above entitled cause be taken up out of its order upon the docket of said court and advanced and set down for hearing upon some particular day of this term of said court, to be fixed by said court.

A copy of said motion, embodying the reasons in

support thereof, together with a printed copy of the final decree entered in said cause is herewith handed you, which will be filed with the clerk of said court.

HARRY A. LEWIS,
WILLIAM F. STRUCKMANN,
JAMES HAMILTON LEWIS, and
DAVID K. TONE,
Solicitors for Appellants.

Received a copy of the above notice and of said motion and final decree this ..... day of December, A. D. 1906.

IN THE

SUPREME COURT OF THE UNITED STATES,

OCTOBER TERM, A. D. 1906.

Samuel B. Raymond, County Treasurer of Cook County, Illinois, *et al.*, *Appellants*,
vs.
Chicago Telephone Company, *Appellee.*
} No. 429.

MOTION TO ADVANCE AND SET DOWN FOR HEARING.

Now come Samuel B. Raymond, County Treasurer of Cook County, etc., and John J. Hanberg, his successor, etc., and The City of Chicago, appellants in the above entitled cause, and move the court that this cause be taken up out of its order upon the docket of this court and be advanced and set down for hearing on some particular day of this term, to be fixed by this court.

In support of said motion, the said appellants beg leave to submit the following reasons:

First: It appears from the final decree in this cause (Original Record, page 130, a printed copy of which final decree is filed herewith, pages 1 to 4) that the Circuit Court, by said final decree, perpetually enjoined an assessment on the capital stock and franchises of the complainant, made by the State Board of Equalization of the State of Illinois,

and aggregating $775,266, and the taxes levied pursuant thereto, and it therefore appears that the proceeding in the court below was one which enjoined the revenue officers of the State of Illinois from collecting an assessment made under the authority of the laws of the State of Illinois.

Second: It appears from the final decree in this cause, above referred to, that a question of momentous importance to the People of the State of Illinois, and a constitutional question of great importance in reference to the jurisdiction of a federal court to enjoin state officials from enforcing the revenue laws of the state is involved in this appeal.

Third: It appears from the final decrees entered in each of the seven causes that were heard together in the court below (printed copies of which final decrees are filed in each of the said respective causes), that all of said causes involve the same questions, and that by the action of the Circuit Court in enjoining the collection of the capital stock assessments made against each of said corporations, respectively, about $2,000,000 of the taxes levied by the State Board of Equalization of the State of Illinois for the year 1901 was perpetually enjoined, and that by reason of the vast sum of money so enjoined, and by reason of the importance of securing a speedy determination of the validity of said assessments, this cause should be advanced and heard out of its regular order.

HARRY A. LEWIS,
WILLIAM F. STRUCKMANN,
JAMES HAMILTON LEWIS, and
DAVID K. TONE,
Solicitors for Appellants.

IN THE CIRCUIT COURT OF THE UNITED STATES,
NORTHERN DISTRICT OF ILLINOIS,
EASTERN DIVISION.

Chicago Telephone Company *vs.* Maurice Fitzgerald, Town Collector of the Town of South Chicago, Samuel B. Raymond, County Treasurer, and City of Chicago.	In Equity. No. 26,177.

DECREE.

Record.

This cause came on to be further heard at this term, and was argued by counsel; and thereupon,
130 upon consideration thereof, it is ordered that all objections and exceptions to the Master's reports be, and the same are hereby overruled, and that the Master's reports and each of them be, and they are hereby approved and confirmed; and the court finds that all the material allegations of the bill of complaint are sustained by the evidence, and that the equities of the case are with the complainant; and thereupon the court doth order, adjudge and decree as follows:

That the assessment made by the State Board of Equalization of the State of Illinois, at its session in 1901, against the complainant, the Chicago Telephone Company, upon its capital stock for the year 1900 (the net amount of said assessment being $775,266) was made under the coercive influence of a writ of mandamus issued by the Circuit Court of Sangamon County, in the State of Illinois, and did not represent the real or independ-

ent judgment of the said State Board of Equalization, and that the assessments made by said State Board of Equalization, at its meeting held in 1901, upon the capital stock of the said complainant, and upon the capital stock of the other corporations named in the writ of mandamus above mentioned, for the year 1900, was in fact made upon a materially different basis from that upon which the capital stock of all other corporations of the same class was assessed by the said State Board of Equalization for the year 1900, and also upon a basis materially different from that upon which all other taxable property in the State of Illinois was assessed for the year 1900; that said assessment made in 1901 upon the capital stock of the complainant for the year 1900, was made under the coercive influence of said mandamus without the exercise or application of the judgment of the State Board of Equalization, or the members thereof, to the ascertainment of the value of said capital stock, and without the State Board of Equalization, either in fact or in form, taking into consideration the basis upon which all other taxable property in the State of Illinois was assessed and taxed for the year 1900, and without in fact or in form equalizing the valuation or assessment of the capital stock of said complainant for the year 1900 with all or any of the assessments made upon the other taxable property in the State of Illinois for the year 1900, with the result that the said assessment upon the capital stock of complainant, made in the year 1901 for the year 1900, was made on a much higher basis than that upon which the other taxable property of the State of Illinois was assessed and taxed for

the year 1900; that said assessment upon said capital stock for the year 1900 was and is unjust and inequitable; that the making of said assessment as aforesaid in 1901, upon the capital stock of the said complainant, and the extension of taxes thereon, and the attempt to enforce the payment of such taxes so extended, from complainant, was and is a violation of the Fourteenth Amendment to the Constitution of the United States, and that the attempt to enforce the collection from complainant of the taxes extended on said reassessment will, unless restrained, result in a multiplicity of suits, and in irreparable injury to the complainant.

An order was entered herein on the 28th day of June, 1902, as a condition precedent to the granting of the temporary relief prayed for in the bill of complaint herein, that complainant should pay, in addition to the tax already paid upon the first or original capital stock assessment for the year 1900, the further sum of $7,216.95, making a total capital stock tax to be paid by the complainant for the year 1900 of $21,859.20, which is found and decreed by the court to be all that complainant should equitably be required to pay as a capital stock tax for the year 1900. Said additional sum of $7,216.95 has been paid by complainant to the County Treasurer of Cook County, in compliance with said order, making the total amount paid by complainant, as taxes upon its capital stock for the year 1900, the said sum of $21,859.20.

It is therefore further ordered, adjudged and decreed that the said assessment of $775,266 on the capital stock of complainant, made by the State Board of Equalization in the year 1901 for the year

1900, and all taxes levied and extended thereon, and now spread upon the books of the tax collecting agencies in the City of Chicago, County of Cook and State of Illinois, for collection, be and they are, and each of them is illegal, null and void, and that the defendants, Maurice Fitzgerald, Town Collector of the Town of South Chicago, and his successor and successors in office, as such town collector, and the defendant, Samuel B. Raymond, County Treasurer of Cook County, Illinois, and *ex-officio* County Collector of said county, and his successor and successors in office, as such county treasurer and *ex-officio* county collector, and the defendant, the City of Chicago, and each of them, and each and every of their respective agents, deputies, servants, attorneys and representatives be, and they are, and each of them is, hereby perpetually enjoined and restrained from in any wise levying or collecting, or in any manner attempting, directly or indirectly, to levy or collect, or to enforce against the complainant, or against any of its property, said tax or taxes, or any or either of them, or any part thereof.

It is further ordered, adjudged and decreed that the costs of this cause be taxed against complainant.

P. S. Grosscup.

IN THE CIRCUIT COURT OF THE UNITED STATES,
NORTHERN DISTRICT OF ILLINOIS,
EASTERN DIVISION THEREOF.

Chicago Telephone Company, *Complainant,* *vs.* Samuel B. Raymond, County Treasurer of Cook County, Illinois, and *ex-officio* County Collector of Cook County, Illinois, and John J. Hanberg, his successor as County Treasurer of Cook County, Illinois, and *ex-officio* County Collector of Cook County, Illinois, and *ex-officio* Town Collector of the Town of South Chicago, and the City of Chicago, *Defendants.*	In Chancery. No. 26,177.

IT IS HEREBY STIPULATED between Samuel B. Raymond, County Treasurer of Cook County, Illinois, and *ex-officio* County Collector of Cook County, Illinois, and John J. Hanberg, his successor as Treasurer of Cook County, Illinois, and *ex-officio* County Collector of Cook County, Illinois, and *ex-officio* Town Collector of the Town of South Chicago, and the City of Chicago, appellants, and Chicago Telephone Company, appellee, that a complete transcript of the record in the case of the *Chicago Union Traction Company* v. *Samuel B. Raymond, County Collector, et al.,* No. 26,609, in the Circuit Court of the United States, for the Northern District of Illinois, as per præcipe now on file with the clerk of said court, shall be filed in the Supreme Court of the United States by counsel for the appellants.

And it is Further Stipulated that the clerk of said Circuit Court may prepare and transmit to the clerk of the Supreme Court of the United States, at Washington, D. C., the following pleadings, proceedings and papers, which are different in this cause from the corresponding pleadings, proceedings and papers in said cause of the *Chicago Union Traction Company* v. *Samuel B. Raymond et al.*, No. 26,609:

1st. Bill of complaint, filed February 21st, 1902;

2nd. Answer of the defendants, filed June 28, 1902;

3rd. Master's report, filed June 9, 1902, together with the depositions of all witnesses filed on said 9th day of June, 1902, and attached to said Master's report, together with all exhibits accompanying the same;

4th. Answer of City of Chicago, filed May 19, 1906;

5th. Final decree, entered July 25, 1906;

6th. Order entered August 10, 1906, correcting final decree as of July 25, 1906;

7th. Petition for appeal and assignment of errors of defendants, filed August 10, 1906;

8th. Appeal bond of defendants, filed September 5, 1906;

9th. Pages 383 to 407, both inclusive, of the depositions of witnesses and exhibits accompanying the Master's report filed in the cause of *Chicago Telephone Company* v. *Samuel B. Raymond et al.*, No. 26,177, on November 19, 1904.

And, inasmuch as many of the papers, pleadings, proceedings and orders in this cause are identical with the corresponding papers, pleadings, proceed-

ings and orders in said cause of the *Chicago Union Traction Company* v. *Samuel B. Raymond et al.*

Now, IT IS HEREBY FURTHER AGREED that for the purpose of considering this appeal, the transcript of the record in this cause to be used in the Supreme Court of the United States shall consist of the papers, pleadings, proceedings and orders contained in the transcript of the record filed in the said cause of the *Chicago Union Traction Company* v. *Samuel B. Raymond et al.*, in the Supreme Court of the United States, which it is hereby agreed is identical with the corresponding pleadings, papers, proceedings and orders had in this cause, except in so far as the transcript in this cause has been made up by filing a transcript of the papers, records, proceedings and orders above specifically enumerated. PROVIDED, however, that either party hereto may at any time take up to said Supreme Court by supplemental transcript of the record, any and all other papers, pleadings, proceedings or orders, had in this cause in the said Circuit Court and not above specifically enumerated.

AND IT IS FURTHER STIPULATED that the printed transcript of the record in this cause may be made up as follows: The pleadings, proceedings and papers in this cause shall be printed in their order, except where such pleadings, proceedings or papers consist of the record filed in the said cause of the *Chicago Union Traction Company* v. *Samuel B. Raymond et al.*, when, instead of printing the said record of said last mentioned cause in full in the places where the same belongs, reference shall be made to the page in the printed transcript of the record in said cause of the *Chicago Union Trac-*

tion Company v. *Samuel B. Raymond et al.*, on which is printed said corresponding pleading, proceeding or paper, and a complete printed transcript of the record in said cause of the *Chicago Union Traction Company* v. *Samuel B. Raymond et al.* shall be attached to and bound in with said printed transcript of the record in this cause.

CHICAGO TELEPHONE COMPANY,
By HOLT, WHEELER & SIDLEY,
Its Solicitors.

CITY OF CHICAGO, SAMUEL B. RAYMOND, COUNTY COLLECTOR, AND ALL OTHER DEFENDANTS,
By HARRY A. LEWIS,
WILLIAM F. STRUCKMANN,
JAMES HAMILTON LEWIS,
and DAVID K. TONE,
Their Solicitors.

IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1906.

No. 429

SAMUEL B. RAYMOND, County Treasurer of Cook County, Illinois, and *ex officio* County Collector of Cook County, Illinois; JOHN J. HANBERG, his Successor as such County Treasurer and County Collector et al.,

Appellants,

vs.

CHICAGO TELEPHONE COMPANY.

Appeal from the Circuit Court of the United States for the Northern District of Illinois.

APPELLANTS' BRIEF.

STATEMENT OF THE CASE.

On the 21st day of February, 1902, appellee filed its bill of complaint (Trans., 2) against Samuel B. Raymond, County Treasurer of Cook County, Illinois, and ex-officio County Collector of said county, and Maurice Fitzgerald, Town Collector of the Town of South Chicago, in said county, seeking to enjoin said officials from enforcing against appellee a certain tax levied pursuant to an assessment made

upon the capital stock and franchises of appellee, by the State Board of Equalization of the State of Illinois on the the 22nd of November, 1901, as and for the first of April, 1900.

The appellee was a corporation engaged in operating telephone lines and exchanges, in the City of Chicago, on the first day of April, 1900.

The statutes of the State of Illinois provide that a County Board of Assessors, consisting of three persons, shall assess the tangible property of corporations doing business within the State of Illinois; and the Illinois law further provides that the capital stock and franchises of corporations pursuing the kind of business that appellee was engaged in shall be assessed by the State Board of Equalization. The members of the said State Board of Equalization in assessing the capital stock and franchises of corporations act as original assessors.

Said Board is also charged with the duty of equalizing the value of real and personal property between the several counties, after said values have been certified by the State Auditor to the county officers. All assessments made by said Board as original assessors, are certified to the county officials, and used as the basis of extending the taxes against the corporation so assessed, on the amount so certified.

Appellee was required, under the laws of the State of Illinois, to deliver to the county assessors, for the year 1900, a statement showing the market value, or if no market value then the actual value, of its shares of stock. This statement was to be forwarded to the State Board of Equalization and used by said Board in making an assessment of the capital stock and franchises of appellee. Appellee made out a statement, which was duly forwarded to the State

Board, but that statement (Trans., 113) contained no information in reference to either the market value or the actual value of appellee's shares of stock.

The Illinois law also provided that if the corporation failed to make out a statement, it should be the duty of the county assessors to make out a schedule getting the information called for from the best obtainable sources.

The State Board met for its annual session September 11, 1900, but took no steps towards assessing the capital stock and franchises of appellee. On November 10, 1900, the State's Attorney of Sangamon County filed a petition for a mandamus on the relation of certain taxpayers, in the Circuit Court of said county, against said State Board of Equalization, alleging that said Board wilfully neglected and refused, during the year 1899, to assess the capital stock and franchises of appellee, and numerous other corporations in said petition named, and that said Board claimed and pretended that it would, at its then session, also refuse to assess the capital stock and franchises of said corporations, or would assess the same at such a figure as to produce a mere nominal tax. Said petition set forth the market value of said stock and that the same was well known to said Board, and said petition prayed that a writ of mandamus might issue, directing said Board to make an assessment of the capital stock and franchises of appellee.

On December 3, 1900, said State Board of Equalization adjourned, and on that day said Board, for the purpose of defeating the prosecution of said mandamus suit, made a mere nominal assessment of the capital stock and franchises of appellee. Said assessment was certified to the County Clerk, and

the taxes extended pursuant thereto paid before said mandamus suit was tried.

During the month of April, 1901, said mandamus suit was tried in the Circuit Court, and on the first of May, 1901, a judgment was entered by that court awarding a writ of mandamus as prayed for in said petition.

An appeal was taken from said judgment by the State Board, and on the 24th day of October, 1901, the Supreme Court of Illinois handed down an opinion affirming said judgment. (*The State Board of Equalization* v. *People,* 191 Ill., 528.) The Supreme Court of Illinois held that the assessment of the capital stock and franchises of appellee made by the Board on December 3, 1900, was so grossly inadequate that it was for that reason fraudulent and void.

Thereafter the mandate of the Supreme Court was duly filed in the Circuit Court, and on the 2d day of November, 1901, there issued a writ of mandamus against the members of the State Board of Equalization, commanding them to assess the capital stock and franchises of the appellee and certain corporations therein named, and in obedience to said writ of mandamus, the said State Board of Equalization, on the 22d of November, 1901, made an assessment, amounting to the sum of $775,266, on the capital stock and franchises of appellee as and for the first day of April, 1900; the taxes amounting to the sum of $60,913.43 were duly extended by the County Clerk on said assessment, and this bill of complaint is filed to enjoin the collection of said taxes, and the enforcement of said assessment.

The various allegations of appellee's bill of complaint, stripped of unnecessary verbiage, amount to

this: That the Constitution and Laws of the State of Illinois require uniformity and equality in the assessment of all property within the state, and that the State Board of Equalization, in violation of those constitutional and statutory provisions, made an assessment upon the capital stock and franchises of appellee that was unequal, discriminating and unfair, and that the above result was brought about in the following manner:

First. The assessment of other property in the state, including that of railroad and telegraph companies and other corporations for the years 1900, as finally equalized by the State Board of Equalization, did not exceed 1/5 of 70 per cent of its cash value, whereas the capital stock and franchises of appellee and the other corporations that were made defendants to said mandamus suit were assessed at 1/5 of their full cash values.

Second. That the assessment of the capital stock and franchises of appellee and the other corporations above named was excessive, unreasonable and much higher than the assessments made upon the property of other persons and corporations for the same year.

Third. That the assessment of the capital stock and franchises of appellee, made by the State Board on December 3, 1900, and the payment in January, 1901, of the taxes extended pursuant to said assessment, constituted a full discharge by the appellee of all taxes that could be levied under the laws of the State of Illinois against its capital stock and franchises.

Fourth. That the members of the State Board of Equalization, in making the assessment complained of, did not exercise their own independent judgment, but believed that they were coerced by the writ of

mandamus of the Circuit Court, into making the assessment, for the amount and in the manner returned.

By reason of the foregoing proceedings, it was charged in the bill of complaint that the appellee was deprived of its property without due process of law, and denied the equal protection of the law, in violation of the 14th amendment.

A demurrer was filed to appellee's bill of complaint, which demurrer was overruled by the court, and subsequent thereto the defendants filed their answer (Trans., 21), admitting that the assessment was made and the taxes extended pursuant thereto as alleged in appellee's bill of complaint, but denying specifically all charges of fraud, illegality, inequality and discrimination. A replication was filed to said answer and the case was thereafter heard upon proof offered by the respective parties before Master in Chancery Bishop of said court. (C. U. T. Co. Trans., 98.)

On the 19th day of May, 1906, the City of Chicago filed an intervening petition alleging that it was the beneficial owner of the greater portion of the taxes here in controversy, and asking that it be made a party to this cause, and that it be permitted to file an answer, and thereafter (C. U. T. Co. Trans., 1267) an order was entered granting the prayer of said petition.

A vast amount of evidence was taken before the Master in behalf of the appellee, but an examination of this record will disclose that all of that evidence, in so far as it was material to the issues in this case, may be classified under the following subdivisions:

1. The testimony of four out of twenty of the members of the State Board of Equalization, who

made the assessments complained of in reference to the operation of their own minds at the time the assessments were made.

2. Certain extracts from the reports of the Railroad and Warehouse Commissioners for the State of Illinois and the reports of the Board of Agriculture of the State of Illinois.

3. Certain extracts from the records of the Union Stock Yards and Transit Company in reference to the value of horses, cattle and hogs within the State of Illinois, and certain extracts from Brown's Directory of American Gas Companies, both of said publications being private compilations.

4. A statement purporting to show the number of horses, cattle and hogs in the State of Illinois, returned for taxation in the year 1900 by the local assessors, as compared with the number purported to be shown in the state by the United States Census Report of 1890; and certain statements purporting to show the aggregate assessments and the total value of the property assessed in the State of Illinois and Cook County from 1873 to 1900.

5. The records of the proceedings of the State Board of Equalization showing the assessments made on the capital stock and franchises of the corporations above named during the years 1899, 1900 and 1901, and certain extracts from the records of the Board for prior years.

6. The testimony of the officers and agents of the complainant corporations in reference to the amounts and values of their properties in the City of Chicago on the 1st day of April, 1900.

The first four items of evidence above quoted were received in evidence over the objection of appellant's counsel.

On the 25th day of April, 1902, when the applica-

tion of appellee for a preliminary writ of injunction came on to be heard, the court entered an order (C. U. T. Co. Trans., 3), that the capital stock and franchises of appellee should be assessed by capitalizing the true net income of appellee for the fiscal year covering April 1, 1900, upon a basis of six per cent, and ordered said cause referred to a Master, and directed said Master to ascertain the amount of additional tax to be paid by appellee pursuant to said plan.

The Master filed a preliminary report (Trans., 28), in which said Master reported that appellee should pay $7,216.95 in addition to the tax previously paid, said sum to be in full of all taxes to be paid by appellee upon its capital stock and franchises for the year 1900.

On November 19, 1904, the Master filed his final report in this case (C. U. T. Co. Trans., 97), in which he found that the material allegations of complainant's bill had been proved, and that no further taxes were due from appellee under the plan of assessment promulgated by the Circuit Court.

To that report exceptions were duly filed and thereafter said cause came on to be heard before the court, and on the 25th of June, 1906, the Circuit Court handed down an opinion (Trans., C. U. T. Co., 1277), in which he held that the material allegations of appellee's bill of complaint had been proved; that the payment theretofore made of $7,216.95 was all the taxes that appellee should pay and that all of the appellants be perpetually enjoined from collecting or attempting to collect the balance of said taxes, amounting to the sum of $39,054.23.

From that decree an appeal was prayed by the appellants to this court.

Appellants' various assignments of errors have

been classified in the specifications of errors under four subdivisions:

I. The Circuit Court erred in refusing to dismiss this cause for want of jurisdiction.

II. The Circuit Court erred in admitting incompetent evidence in behalf of appellee and in refusing to hold that there was no competent evidence tending to prove the allegations of appellee's bill of complaint.

III. The Circuit Court erred in not holding that appellee has not made out a case entitling it to relief in a court of equity.

IV. The Circuit Court erred in enjoining the collection of the taxes in question without requiring appellee to pay $39,054.23 in addition to the amount already paid.

The various assignments of error will be considered in our argument under the same subdivisions.

SPECIFICATIONS OF ERRORS.

I.

The Circuit Court erred in refusing to dismiss this cause for want of jurisdiction.

First: The said Circuit Court erred in failing and refusing to dismiss this cause for want of jurisdiction in a Federal Court, appearing upon the face of complainant's bill of complaint.

Second: The said Circuit Court erred in failing to dismiss complainant's bill of complaint for want of jurisdiction because the undisputed evidence in this record shows that a Circuit Court of the United States is without jurisdiction to hear and determine the matters and things charged in complainant's bill.

Third: The said Circuit Court erred in refusing

to hold that the allegations of the complainant's bill of complaint show that the complainant has not been denied by the State of Illinois or its officers, any right, privilege or immunity guaranteed to the complainant by the Fourteenth Amendment to the Constitution of the United States.

Fourth: The said Circuit Court erred in refusing to hold that the allegations of complainant's bill of complaint show that the complainant has not been deprived of its property without due process of law, in violation of the Constitution of the United States.

Fifth: The said Circuit Court erred in refusing to hold that the State of Illinois had not denied to the complainant the equal protection of its laws within its jurisdiction.

Sixth: The said Circuit Court erred in refusing to find that the sole grievance complained of in complainant's bill of complaint is that the officers of the State of Illinois charged with the duty of making a fair and equal assessment of the complainant's capital stock, have made an assessment that is unfair and unequal, contrary to and in violation of the Constitution and the Laws of the State of Illinois; and said Circuit Court likewise erred in assuming and retaining jurisdiction of this cause, when, upon the face of complainant's bill of complaint, it appears that the said Circuit Court was without jurisdiction.

Seventh: The said Circuit Court erred in refusing to hold that inasmuch as the complainant and defendants were all citizens of and residents of the State of Illinois, a Federal Court had no jurisdiction in this cause to hear and determine the fairness, equality or regularity of the assessment made against the complainant, and the said Circuit Court erred in refusing to dismiss this cause for want of jurisdiction.

II.

The Circuit Court erred in admitting incompetent evidence in behalf of appellee and in refusing to hold that there was no competent evidence tending to prove the allegations of appellee's bill of complaint.

Ninth: The said Circuit Court erred in overruling the objections and exceptions and each and every of said objections and each and every of said exceptions to the said Master's reports and to each of them.

Tenth: The said Circuit Court erred in approving and confirming the Master's reports and each of them, filed in this cause.

Eleventh: The said Circuit Court erred in failing and refusing to sustain the objections and each and every of the same filed by the defendants to said Master's reports and to each of said reports.

Twelfth: The said Circuit Court erred in finding that all of the material allegations of the bill of complaint are sustained by the evidence and likewise in finding that the equities of the case are with the complainant.

Thirteenth: The said Circuit Court erred in failing to find that the material allegations of the bill of complaint in this cause have not been proved by any competent evidence.

Fourteenth: The said Circuit Court erred in finding that the assessment made by the State Board of Equalization of the State of Illinois, at its session in 1901 against the complainant, upon its capital stock for the year 1900, amounting to $775,266, was made under the coercive influence of a writ of mandamus issued by the Circuit Court of Sangamon County, in the State of Illinois, and did not repre-

sent the real or independent judgment of the said State Board of Equalization.

Fifteenth: The said Circuit Court erred in failing and refusing to find that the assessment, amounting to $775,266 made by the State Board of Equalization of the State of Illinois at its session in 1901 against the complainant, upon its capital stock for the year 1900, was made by the said State Board of Equalization in the exercise of its own judgment and upon its official responsibility.

Sixteenth: The said Circuit Court erred in finding that the assessments made by the State Board of Equalization at its meeting, held in 1901, upon the capital stock of said complainant and upon the capital stock of the other corporations for the year 1900, named in the writ of mandamus, issuing from the Circuit Court of Sangamon County, Illinois, were in fact made upon a materially different basis from that upon which the capital stock of all other corporations of the same class were assessed by the State Board of Equalization for the year 1900, and also upon a basis materially different from that upon which other taxable property in the State of Illinois was assessed for the year 1900.

Seventeenth: The said Circuit Court erred in refusing and failing to find that the only competent evidence contained in the record in this cause showed that the assessments made by the State Board of Equalization at its meeting held in 1901 upon the capital stock of said complainant, and upon the capital stock of the other corporations for the year 1900, named in the writ of mandamus issuing from the Circuit Court of Sangamon County, Illinois, were in fact made upon the same or a similar basis as that upon which the capital stock of all other corporations of the same class were assessed

by the State Board of Equalization for the year 1900, and also that said assessments as to each of said corporations were made upon the same or a similar basis upon which all other taxable property in the State of Illinois was assessed for the year 1900.

Eighteenth: The said Circuit Court erred in finding that said assessment made in 1901 on the capital stock of complainant, was made under the coercive influence of a writ of mandamus, issuing from the Circuit Court of Sangamon County, Illinois, without the exercise or application of the judgment of the State Board of Equalization or the members thereof, to the ascertainment of the value of said capital stock and without the State Board of Equalization, either in fact or in form, taking into consideration the basis upon which all other taxable property in the State of Illinois was assessed and taxed for the year 1900 and without in fact or in form equalizing the valuation or assessment of the capital stock of said complainant for the year 1900 with all or any of the assessments made upon the other taxable property in the State of Illinois for the year 1900, with the result that said assessment made on the capital stock of the complainant, in the year 1901 for the year 1900, was made on a much higher basis than that upon which the other taxable property of the State of Illinois was assessed and taxed for the year 1900.

Nineteenth: The said Circuit Court erred in refusing and failing to find that the assessment made in the year 1901 on the capital stock of the complainant, was made without any coercion and in the exercise of the independent judgment of the State Board of Equalization and the members thereof, for the purpose of ascertaining the fair value of the

capital stock of said complainant, and that said assessment was obtained and resulted from the said State Board of Equalization equalizing the valuation or assessment of the capital stock of said complainant for the year 1900 with all of the assessments made upon other taxable property in the State of Illinois, and that the assessment so arrived at was just and fair to the said complainant.

Twentieth: The said Circuit Court erred in finding that the making of the assessment for the year 1900 upon the capital stock of said complainant, and the extension of the taxes thereon, and the attempt to enforce the payment of the taxes so extended, from complainant, was and is a violation of the Fourteenth Amendment to the Constitution of the United States.

Forty-second: The said Circuit Court erred in admitting and receiving in evidence, over the objection and exception of defendants' counsel, oral testimony for the purpose of explaining, varying and contradicting the official acts, records and proceedings of the State Board of Equalization for the years 1900 and 1901, wherein and whereby said Board made the assessment against the property of the complainant sought to be enjoined in this cause.

Forty-third: The said Circuit Court erred in refusing and failing to hold that parol evidence was incompetent, for the purpose of explaining, varying or contradicting the official acts, records and proceedings of the State Board of Equalization of the State of Illinois, in reference to the assessments on the capital stock of the complainant, made by the said Board in the year 1901, for the year 1900.

Twenty-third: The said Circuit Court erred in admitting and receiving in evidence over the objection and exception of defendants' counsel, the fol-

lowing testimony of Samuel M. Barnes, a member of the State Board of Equalization, of the State of Illinois, for the years 1900 and 1901:—

I heard the members of the State Board of Equalization discuss the remarks of the court on the application for an extension of time to make return to the writ of mandamus. My recollection of one remark that I heard was that it was a mere question of the Board's getting their pencils and getting to work and they ought to do it. I heard one of the Board say that the court was very vituperative in this matter. I think it was either Mr. Schaefer or Mr. Hopkins of the Committee on the Board who was over there listening to the court. The impression I got was very strongly fixed in my mind and it was that his attitude was intensely hostile to the Board and I was told by those who heard him that it was in the shape of a roast from start to finish as far as his manner was concerned. Of course, I cannot just quote the language he used, but rather his manner I was told was vituperative, absolutely so. I was told this by members of the State Board of Equalization who were present and heard the remarks of the judge. The reassessment as we determined it, was made with a view to satisfying the court, the order of the court. We made no deduction, if I remember rightly, on account of that all of these companies but two had in 1900 been assessed upon their capital stock. We did not take into consideration the fact, if it was a fact, that other property in the state had not been assessed at the maximum more than 70 per cent of its value. The court, in his discussion, gave an illustration of the manner in which the assessment should be made and I think he made an example of the Gas Company here; in any event one of the companies he made an example

of that and in that example he said just how the assessment should be made and as this was an order of the court, we followed that example that he gave in a general way, for all these assessments. Mr. Smith and Mr. Greenacre furnished these tables (referring to complainant's Exhibit A, 10/23/03), said document being a compilation of the value of the capital stock of said companies, prepared by Miss Goggin and Miss Haley, as members of the Teachers' Federation. Our desire in making this reassessment was in order to satisfy the Circuit Court of Sangamon County, because it was not my judgment that it was a proper assessment. The general idea seemed to be with the committee on capital stock that the action of the committee was dictated by the court. It was discussed between the committee on capital stock at about the time the reassessment was reported to the Board and the first object to be attained was to satisfy the court. The assessments that were made subsequent to this assessment of 1900 were based on what we believed to be the law and in a general way on the judgment of the members, that is on the real value. The assessment for 1901 we regarded as representing our real judgment and the other we did to satisfy the court. The restraining order issued by the court was dissolved on the 22nd of November and I think it was a very short time after that on that day that we made our return to the writ.

Twenty-fourth: The said Circuit Court also erred in admitting in evidence, over the objection of defendants' counsel, the testimony of Frank P. Martin, a member of the State Board of Equalization, which was in substance the same as the testimony of said Barnes.

Twenty-fifth: The said Circuit Court erred in

receiving in evidence, over the objection of defendants' counsel, the testimony of John S. Cruttenden, a member of the State Board, which was in substance the same as the testimony of said Barnes.

Twenty-sixth: The said Circuit Court erred in receiving in evidence, over the objection of defendants' counsel, the testimony of Louis D. Hirsheimer, a member of the State Board of Equalization, which was in substance the same as the testimony of said Barnes.

Twenty-eighth: The said Circuit Court erred in receiving in evidence, over the objection of the defendant, the report of the Railroad and Warehouse Commissioner of the State of Illinois for the year 1900, and the report of the Commissioner of Agriculture of the State of Illinois for the same year, and Brown's Directory of American Gas Companies.

Thirty-second: The said Circuit Court erred in admitting in evidence, over the exception of defendant, the statement, being Ward Exhibit C, purporting to show live stock returned for taxation in 1900 by local assessors as compared with live stock according to the U. S. Census returns.

III.

The Circuit Court erred in refusing to hold that appellee had not made out a case entitling it to relief in a court of equity.

Twenty-second. The said Circuit Court erred in ordering, adjudging and decreeing that the assessment of $775,266 on the capital stock of the complainant, made by the State Board of Equalization in the year 1901 for the year 1900, and all taxes levied and extended

thereon and now spread upon the books of the tax collecting agencies in the City of Chicago, County of Cook and State of Illinois, for collection, are, and each of them is, illegal, null and void, and that the defendants Samuel B. Raymond, County Treasurer of Cook County, Illinois, and ex-officio County Collector of Cook County, Illinois, and Maurice Fitzgerald, Town Collector of the Town of South Chicago, and John J. Hanberg, his successor as County Treasurer of Cook County, Illinois, and ex-officio County Collector of said county, and ex-officio Town Collector of the Town of South Chicago, in said county, and his successor and successors in office as such County Treasurer and ex-officio County Collector and ex-officio Town Collector of said Town of South Chicago, and the defendant, Town Collector of the Town of South Chicago, and the defendant, the City of Chicago, and each of them and each and every of their respective agents, deputies, servants, attorneys and representatives, be and are perpetually enjoined and restrained from in any wise levying or collecting or in any manner attempting, directly or indirectly, to levy or collect or to enforce against the complainant or against any of its property, said tax or taxes, or any or either of them, or any part thereof.

IV.

The Circuit Court erred in enjoining the collection of the tax in question without requiring appellee to pay $39,054.23 in addition to the amount already paid.

Twenty-first: The said Circuit Court erred in entering the order on the 28th day of June, 1902, to the effect that the complainant should pay, in addition to the tax already paid, upon the first or original capital stock assessment for the year 1900,

the further sum of $7,216.95, making a total capital stock tax to be paid by complainant for the year 1900 of $21,859.20, which was found and decreed by the court to be all that complainant should equitably be required to pay as a capital stock tax for the year 1900, for said Circuit Court should have found, if it had jurisdiction of this cause and of the parties hereto, that the complainant should be required to pay the aggregate amount of all taxes assessed against it in the year 1901 as and for the year 1900 upon its capital stock, aggregating $775,266.

Twenty-second: The said Circuit Court erred in ordering, adjudging and decreeing that the assessment of $775,266 on the capital stock of the complainant, made by the State Board of Equalization in the year 1901 for the year 1900, and the taxes levied and extended thereon, and now spread upon the books of the tax collecting agencies in the City of Chicago, County of Cook and State of Illinois, for collection, are and each of them is illegal, null and void, and that the defendants Samuel B. Raymond, County Treasurer of Cook County, Illinois, and ex-officio County Collector of Cook County, Illinois, and Maurice Fitzgerald, Town Collector of the Town of South Chicago, and John J. Hanberg, his successor as County Treasurer of Cook County, Illinois, and ex-officio County Collector of said County and ex-officio Town Collector of the Town of South Chicago in said County, and his successor and successors in office as such County Treasurer and ex-officio County Collector and ex-officio Town Collector of said Town of South Chicago, and the defendant, Town Collector of the Town of South Chicago, and the defendant, the City of Chicago, and each of them, and each and every of their respective agents, deputies, servants, attorneys and representatives, be

and are perpetually enjoined and restrained from in anywise levying or collecting, or in any manner attempting, directly or indirectly, to levy or collect, or to enforce against the complainant, or against any of its property, said tax or taxes, or any or either of them, or any part thereof.

BRIEF OF ARGUMENT.

I.

THE CIRCUIT COURT ERRED IN REFUSING TO DISMISS THIS CAUSE FOR WANT OF JURISDICTION.

(a) Equality and uniformity of taxation is not a right guaranteed by the Federal Constitution.

(b) Where the ministerial officers of a state, contrary to the constitution and laws of that state, deprive a person of his property, without due process of law, no federal question is presented, for their acts will not be imputed to the state, but in such a case it will be presumed that the courts of the state will give full relief.

(c) The session of the State Board was public, and appellee had an opportunity to be present and be heard. This constituted due process of law.

II.

THE CIRCUIT COURT ERRED IN ADMITTING INCOMPETENT EVIDENCE IN BEHALF OF APPELLEE AND IN REFUSING TO HOLD THAT THERE WAS NO COMPETENT EVIDENCE TENDING TO PROVE THE ALLEGATIONS OF APPELLEE'S BILL OF COMPLAINT.

(a) The testimony of the individual members of the State Board in reference to the operation of their

minds at the time they made the assessment complained of was incompetent.

(b) The extracts from the report of the Railroad and Warehouse Commissioners and the Board of Agriculture were incompetent.

(c) The figures taken from the books of the Union Stock Yards and Transit Company and Brown's Directory of American Gas Companies were incompetent.

(d) The alleged discrepancy between the Census Report and the Assessors' returns with reference to the amount of live stock within the State of Illinois, during the year 1900, did not prove any issue in this case.

(e) The records of the State Board did not sustain the allegations of appellee's bill.

(f) The testimony of the officers of appellee in reference to the value of its property on April 1, 1900, did not make out a case.

III.

THE CIRCUIT COURT ERRED IN REFUSING TO HOLD THAT APPELLEE HAD NOT MADE OUT A CASE ENTITLING IT TO RELIEF IN A COURT OF EQUITY.

(a) If the re-assessment complained of was void and illegal because the Board had exhausted its power in making the first assessment, then appellee had an adequate remedy at law, for it could have paid the void assessment and then have recovered the money back.

(b) Overvaluation of property by an assessing body, unaccompanied with fraud or bad faith, furnishes no ground for equitable intervention.

(c) Appellee was guilty of *laches* and iniquity, and has not offered to do equity.

IV.

THE CIRCUIT COURT ERRED IN ENJOINING THE COLLECTION OF THE TAX IN QUESTION WITHOUT REQUIRING APPELLEE TO PAY $39,054.23, BEING THE AMOUNT NOW DUE IN ADDITION TO THE TAX ALREADY PAID.

(a) The Circuit Court erred in assessing appellee upon its alleged net income instead of upon the fair market value of its capital stock.

(b) There was no competent evidence tending to show the net income of appellee.

ARGUMENT.

I.

THE CIRCUIT COURT SHOULD HAVE DISMISSED THIS CAUSE FOR WANT OF JURISDICTION.

The Constitution of the State of Illinois (Sec. 1, Art. 9) guarantees to persons and corporations within the State equality and uniformity of taxation. The statutes of the State of Illinois enacted pursuant thereto provide (Sec. 108, Hurd's Revised Statutes, 1899, p. 1412) that the State Board of Equalization shall assess the capital stock and franchises of corporations at its fair cash value.

It will be observed that the foregoing statutory and constitutional provisions imposed upon the State Board of Equalization the duty of assessing the capital stock and franchises of corporations at its fair cash value in precisely the same way that all other property throughout the state is assessed.

The Supreme Court of Illinois has repeatedly held that it is the duty of the assessing officers of the State of Illinois, to carry out the constitutional

and statutory provisions, in reference to uniformity and equality of taxation.

The Circuit Judge in his opinion (C. U. T. Co. Trans., 1297) held that the failure of the State Board of Equalization to carry out the constitutional and statutory provision above quoted, guaranteeing equality and uniformity of taxation, constituted a violation of the 14th Amendment, and gave a Circuit Court of the United States jurisdiction of this cause regardless of the citizenship of the parties.

An examination of the decisions of this court will plainly demonstrate that the Circuit Judge was in error in his fundamental assertion in this case, that any substantial departure from the laws of the State of Illinois, on the part of the officers of the State of Illinois, in levying and collecting taxes, constituted the taking of property, without due process of law, in violation of the Federal Constitution.

A.

The law is well settled by the decisions of this court that equality and uniformity of taxation is not a right guaranteed by the Federal Constitution.

The following are a few of many decisions of this court laying down the above rule:

State Railway Tax Cases, 92 U. S., 575, 618.

Davidson v. *Board of Admrs. of New Orleans*, 96 U. S., 97.

Kelly v. *City of Pittsburgh*, 104 U. S., 78.

Merchants & Manufacturers Nat. Bank v. *Pennsylvania*, 167 U. S., 461-4.

Henderson Bridge Co. v. *City of Henderson*, 173 U. S., 592.

Magoun v. *Ill. Trust & Sav. Bank*, 170 U. S., 283, 293, 295.

Connolly v. *Union Sewer Pipe Co.*, 184 U. S., 540, 562.

State of Missouri ex rel. Hill v. *Dockery*, 191 U. S., 165, 170.

Travelers Ins. Co. v. *Connecticut*, 185 U. S., 364, 371.

See also Brief in *C. U. T. Co.* case, p. 39.

Should we, however, concede that equality and uniformity of taxation is guaranteed under the [illegible] Amendment, [illegible] of complaint does not make out a case giving the Circuit Court jurisdiction, for the alleged wrongful acts of the State Board of Equalization were not the acts of the state within the meaning of the 14th Amendment.

B.

Where the constitution and the laws of a state are just and fair and the sole grievance of which a party complains is that the officers of the state, charged with executing those laws, have deprived that party of his property, contrary to the constitution and the laws of the state, and in violation of the terms thereof, no federal question is presented, for, under the above circumstances, it will be presumed that the state courts will give full relief against the illegal and unauthorized acts of the officers of the state.

The above proposition is sustained by the following authorities:

Strauder v. *West Virginia*, 100 U. S., 303.

Virginia v. *Rives*, 100 U. S., 313.

Civil Rights Cases, 109 U. S., 3.

Kentucky v. *Powers*, 201 U. S., 1.

Barney v. *City of New York*, 193 U. S., 430.

Manhattan Railway Company v. *City of New York*, 18 Fed., 195.

Coulter v. *Louisville & N. R. Co.*, 196 U. S., 599.

See also Brief in *C. U. T. Co.*, p. 46.

C.

Equally untenable is the claim in appellee's bill of complaint that under the circumstances there described the appellee was deprived of its property without due process of law, because it had no opportunity to be heard at the time the assessment complained of was levied against it.

The time and place of the sessions of the State Board of Equalization were fixed by law, those sessions were public, and the appellee had an opportunity to be present and be heard. Such a proceeding constitutes due process of law.

Michigan S. R. R. Co. v. *Powers*, 201 U. S., 245, 301.

Public Clearing House Co. v. *Coyne*, 194 U. S., 497.

II.

THERE IS NO COMPETENT EVIDENCE IN THIS RECORD TENDNG TO SUSTAIN THE MATERIAL ALLEGATIONS OF APPELLEE'S BILL OF COMPLAINT WITH REFERENCE TO THE ASSESSMENT COMPLAINED OF.

We will take up each of the items of evidence offered by appellee before the Master and show that that evidence was incomplete and should be disregarded by this court.

A.

The testimony of the individual members of the State Board of Equalization in reference to the operation of their minds at the time they made the assessment complained of was incompetent and should have been excluded by the Circuit Court.

Four out of the twenty members of the State Board of Equalization, that made the assessment

complained of, were called to the witness stand before the Master by the appellee and they testified in substance that they did not equalize the assessment of appellee's property with the assessments made upon other property throughout the state for the same year, and that they put down what they believed the State Circuit Court wanted them to put down.

By this means they were permitted to contradict their official acts, as evidenced by the record of the State Board. This evidence was incompetent and should have been excluded.

Wright v. *City of Chicago*, 48 Ill., 285.

Quick v. *Village of River Forest*, 130 Ill., 323, 325.

Ryder Estate v. *City of Alton*, 175 Ill., 94.

Republic Life Ins. Co. v. *Pollak*, 75 Ill., 292.

Fayerweather v. *Ritch*, 195 U. S., 276.

Coulter v. *Louisville & N. R. Co.*, 196 U. S., 599.

Brief, *C. U. T. Co.*, p. 79.

B.

The extracts from the report of the Railroad and Warehouse Commissioners and the Board of Agriculture of the State of Illinois were incompetent.

In order to make a public record competent evidence of the facts therein recited, two things are necessary: First, that the fact therein recited is required by law to be reported by the official; second, that the person recording the fact must have had personal knowledge of the matters he was registering at the time.

The above reports do not conform to either of said requirements, and were therefore incompetent.

Hegler v. *Faulkner*, 153 U. S., 109.

Chaffee v. *U. S.*, 18 Wall., 516.
Swift v. *State of New York*, 89 N. Y., 52.
Brief, *C. U. T. Co.*, p. 92.

C.

The figures taken from the books of the Union Stock Yards and Transit Company and from Brown's Directory of American Gas Companies were not competent evidence and should have been excluded.

The above publications were private compilations, and the witness who produced said figures admitted that he had no knowledge as to whether the figures were correct. Under the above circumstances the publications should have been excluded.

State v. *Daniels*, 44 New Hampshire, 383.
Richardson Bros. & Co. v. *Stringfellow*, 100 Ala., 416, 418.
Langley v. *Smith*, 3 New York St. Rep., 276.
See also authorities cited in *C. U. T. Co.* Brief, p. 102.

D.

The alleged discrepancy between the United States Census Report and the Assessors' return with reference to the amount of live stock within the State of Illinois during the year 1900 does not tend to prove any fact in this case.

Live stock could be assessed and at a different rate and in a different manner than the property of street railroads, gas, telephone and electric light companies, without infringing on the right guaranteed by the Federal Constitution.

E.

The records of the State Board of Equalization do not sustain any of the allegations of appellee's bill.

Appellee offered in evidence certain resolutions contained in the minutes of proceedings of the State Board of Equalization for certain years prior to 1893, to the effect that in the opinion of the Board the real and personal property of the state during the years in question had been assessed at less than its full cash value.

Prior to 1898 assessors were required to value property at its fair cash value. By the terms of the Act of July 1st, 1898, assessors were required to set down in one column the full value of real and personal property and in another column one-fifth of said full value, which latter sum should be the assessed value. This statute was enacted for the very purpose of doing away with the practice of undervaluing property which it is claimed had existed prior thereto. Evidence of undervaluations prior to the Act of 1898 does not tend to prove the existence of undervaluations thereafter.

Coulter v. *Louisville & N. R. Co.*, 196 U. S., 599.

III.

APPELLEE HAS NOT MADE OUT A CASE ENTITLING IT TO RELIEF IN A COURT OF EQUITY.

A.

If the contention of appellee be well taken, namely, that the re-assessment of 1900 was void and illegal because the Board had exhausted its powers in making the first assessment, then appellee had an adequate remedy at law, for it could have paid the

void assessment and then have recovered the money back.

Shelton v. *Platt*, 139 U. S., 591.

Allen v. *Pullman Pal. Car Co.*, 139 U. S., 658.

Pacific Express Co. v. *Seibert*, 142 U. S., 339.

B.

Overvaluation of property by an assessing body unaccompanied with fraud or bad faith furnishes no ground for equitable intervention.

There are many general allegations in appellee's bill, but when those allegations are reduced to their lowest terms, the whole bill (aside from the claim that the second assessment was void) is that the property of the appellee was assessed at a higher proportionate amount than was the property of other persons and corporations throughout the State of Illinois for the same year. The above allegations are insufficient to justify relief in a court of equity.

Pittsburgh C. C. & St. L. R. Co. v. *Backus*, 154 U. S., 421, 434.

Maish v. *Territory of Arizona*, 164 U. S., 599, 611.

C.

Before a court of equity will grant an injunction to restrain the collection of a tax on the ground of excessive valuation and unfair discriminations on the part of the assessors, complainant must distinguish by his bill the legal from the illegal part of the tax, and must actually pay the tax which is due; otherwise he is not entitled to relief.

Albuquerque Nat. Bk. v. *Perea*, 147 U. S., 87.

State Railway Tax Cases, 92 U. S., 575, 616.

National Bank v. *Kimball*, 103 U. S., 733.

IV.

THE UNDISPUTED EVIDENCE SHOWS APPELLEE OUGHT TO PAY $39,054.23 MORE THAN IT WAS REQUIRED TO PAY BY THE ORDER OF THE CIRCUIT COURT.

Even if we assume that the Circuit Court had jurisdiction of this cause, that the appellee has established the allegations of its bill by competent evidence, that the reassessment for the year 1900 was illegal and void, and that the Circuit Court had the power to make a re-assessment, then appellee was only entitled to the following relief:

First, to receive credit for the $14,642.25 paid on the original assessment; second, to have its capital stock and franchises assessed at 70 per cent of its actual cash value instead of at 100 per cent, which latter sum it is claimed the State Board of Equalization used as the basis for its assessment.

The rules of the State Board of Equalization under which all other corporations were assessed for the year 1900, required that the market value or fair cash value of the corporation's shares of stock should be added to its debt (excluding indebtedness for current expenses) and that the aggregate should be the fair cash value of the capital stock and franchises of such corporation.

The above method of assessment was the one directed to be made by the writ of mandamus of the Circuit Court, and has been held to be the proper method of assessing capital stock and franchises of Illinois corporations under the very statute now in question.

State Board of Equalization v. *People*, 191 Ill., 528.

State Railroad Tax Cases, 92 U. S., 575.

The Circuit Court ignored the fair cash value of

the stock of appellee, and capitalized the alleged net income at six per cent (taking such net income from certain lump sums shown by the company's books) and by these means placed so insignificant a valuation upon the capital stock and franchises of appellee that it was permitted to escape the payment of the greater share of its tax for the year 1900.

The Circuit Court, in arriving at the amount of the additional tax to be paid by appellee for the year 1900, followed the computation made by the Master; the Master in turn adopted the figures and method of computation furnished to him by the Company's experts.

We have presented three tables below, numbered respectively (1), (2) and (3). Table (1) showing the computation made by the Master, which was approved by the Circuit Court; Table (2) showing the amount of taxes due under the rules of the State Board of Equalization, which were approved by this court in the *State Railroad Tax Cases, supra,* and Table (3) showing the tax still remaining due and unpaid on appellee's own theory, that 1/5 of 70 per cent of the full value of the capital stock and franchises of the appellee should be used instead of the full value, which it is claimed the State Board took:

(1)

Net earnings	$ 499,611.55
Less additional 1900 tax	7,211.55
Net earnings for 1900	$ 492,400.00
Capitalized at 6%	8,206,666.00
Less assessed value outside of Illinois.	43,620.00
	$ 8,163,046.00
Equalized by deducting 30%	5,714,132.00
Divide by 5	1,142,826.00

Less equalized value Illinois tangible personal		876,124.00
Net capital stock	$	266,702.00
Less capital stock on which tax has been paid		175,000.00
	$	91,702.00
Rate for 1900 taxation, .0787—additional tax to be paid for 1900	$	7,216.95

Making an assessment of the capital stock of said corporations in accordance with the rules approved by this court in the *State Railroad Tax Cases, supra,* we would get the following result:

(2)

Capital stock value as required by law	$	3,876,330.00
1/5 valuation upon which taxes are to be extended		775,266.00
Extending tax at .0787		60,913.43
Deduct tax paid on original assessment		14,642.25
Leaves	$	46,271.18
Deduct tax assessed by U. S. Cir. Ct.		7,216.95
Tax yet due	$	39,054.23

The above assessment is made by taking one-fifth of the full value of the capital stock and franchises of the above corporations.

Should we assume that appellee's contention be sound, that one-fifth of 70 per cent of the full value of the capital stock and franchises of the appellee should be taken, then we get the following results:

(3)

Full value of capital stock, including franchise (C. U. T. Co. Trans., 242)	$	8,000,000.00

70% of that amount	5,600,000.00
1/5 of that amount, to make assessed value	1,120,000.00
Deduct equalized assessed value of tangible property (C. U. T. Trans., 242)	824,734.00
Leaves net assessed value of capital stock	$ 295,266.00
Extend tax at .0787	23,237.43
Deduct tax paid on original assessment	14,642.25
Leaves	$ 8,595.18
Deduct tax paid by order of U. S. Cir. Ct.	7,216.95
Leaves ..... tax remaining unpaid on complainant's own theory of equalizing the full value of the capital stock by taking one-fifth of 70 per cent of the same.	$ 1,378.23

It appears from the foregoing figures that if the Circuit Court had followed the method of assessment approved by this court in the *Railroad Tax Cases, supra,* then even after equalizing the value by taking one-fifth of 70 per cent, the appellee would have been required to pay $1,378.23 more than it was ordered to pay by the Circuit Court.

There are many other inaccuracies in the method of computation which have been fully pointed out in the brief filed in the *Chicago Union Traction Company* case, to which reference is here made for a full discussion of the question. (Brief, *Chicago Union Traction Company,* page 127.)

C. The decree of the Circuit Court was also inequitable and unfair in that it permitted the appellee to pay the additional taxes of $7,216.95 on July 1, 1902, without paying any interest on the same.

Taxes levied for the 1st of April, 1900, became delinquent under the laws of the State of Illinois on the 1st of May, 1901, and taxes thereafter remaining unpaid drew interest at the rate of 1 per cent a month. Appellee, by failing to furnish any statement to the State Board of Equalization of the value of its capital stock and franchises, and by assisting said Board in attempting to maintain the first assessment which was expressly held by the State Supreme Court to be fraudulent and void, is legally responsible for the delay in the making of the second assessment. Now, that the appellee has invoked the aid of a court of equity, it should be required to do equity. Equity requires that appellee pay its just burden of taxes and interest at the rate of 5 per cent on that amount from the time it should have been paid to the collecting officers. Appellee had the use of that money from the 1st of May, 1901, up till July 1, 1902, and no reason has been or can be suggested why it should not reimburse the state in that regard.

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Solicitors for Appellants.

Office Supreme Court, U. S.
FILED
APR 8 1907
JAMES H. McKENNEY,
Clerk.

IN THE

Supreme Court of the United States.

October Term, A. D. 1906.

No. 420/120

SAMUEL B. RAYMOND, County Treasurer, et al.,

vs.

CHICAGO TELEPHONE COMPANY.

Appeal from the Circuit Court of the United States for the Northern District of Illinois.

ARGUMENT OF WILLIAM G. BEALE FOR APPELLEE.

WILLIAM G. BEALE,
CHARLES S. MOTT,
WILLIAM P. SIDLEY,
Of Counsel for Appellee.

[illegible]

IN THE

Supreme Court of the United States.

OCTOBER TERM, A. D. 1906.

No. 429.

SAMUEL B. RAYMOND, County Treasurer, et al.,

vs.

CHICAGO TELEPHONE COMPANY.

Appeal from the Circuit Court of the United States for the Northern District of Illinois.

STATEMENT.

(1) THIS CASE INVOLVES FUNDAMENTALLY THE QUESTION WHETHER, AFTER A CAPITAL STOCK ASSESSMENT HAS BEEN FORMALLY MADE AGAINST A DOMESTIC CORPORATION WHICH HAS FURNISHED ALL REQUIRED INFORMATION, AND AFTER THE TAX THEREON HAS BEEN EXTENDED AND PAID, A STATE BOARD OF EQUALIZATION UNDER STATE STATUTORY PROVISIONS CALLING FOR NO NOTICE WHATEVER, AND IN OBEDIENCE TO A WRIT OF MANDAMUS ISSUED BY A STATE CIRCUIT COURT AND APPROVED BY A STATE SUPREME COURT IN PROCEEDINGS TO WHICH THE CORPORATION WAS NOT A PARTY, MAY, UNDER THE "DUE PROCESS" CLAUSE OF THE 14TH AMENDMENT TO THE

FEDERAL CONSTITUTION LAWFULLY MAKE A NEW AND LARGER CAPITAL STOCK ASSESSMENT AGAINST THE CORPORATION, IGNORING THE FORMER ONE, AND ALSO THE TAX PAID UNDER IT, AND INCLUDING IN THE SECOND ASSESSMENT CAPITAL STOCK REPRESENTING AN INVESTMENT IN PROPERTY SITUATED IN ANOTHER STATE.

(2) THE CASE ALSO INVOLVES THE FUNDAMENTAL QUESTION WHETHER UNDER A STATE CONSTITUTION AND LAWS REQUIRING PROPORTIONATE AND UNIFORM TAXATION THE ACTION OF A STATE BOARD OF EQUALIZATION ASSESSING IN LITERAL OBEDIENCE TO SUCH WRIT OF MANDAMUS THE PROPERTY OF A SMALL NUMBER OF DOMESTIC CORPORATIONS UPON A RADICALLY DIFFERENT BASIS AND RULE OF VALUATION FROM THAT APPLIED FOR THE SAME YEAR TO ALL OTHER CORPORATIONS OF THE SAME CLASS IN THE STATE DOES NOT DENY TO THE FEW CORPORATIONS SO ASSESSED THE EQUAL PROTECTION OF THE LAWS GUARANTEED BY THE 14TH AMENDMENT TO THE FEDERAL CONSTITUTION.

In the main, the fundamental facts of this case and the principles of law applicable to it are the same as in the case of *Raymond, County Treasurer, et al.*, v. *Chicago Union Traction Company*, No. 424 of this term.

The property facts are probably the most simple of those in the various cases, of which this one is really a part. The Telephone Company, this appellee, is an Illinois corporation owning property in the States of Illinois and Indiana and operating such property in such states as well as in the transmission of communications between citizens in those states. Appellee had

no bonded or other indebtedness involved in making an assessment. Upon April 1, 1900, as of which date under the Illinois statute the assessment must be made, appellee had outstanding shares of capital stock to the amount of $5,000,000 which had been paid for in cash and invested in appellee's property. The State Board of Equalization assessed the full value of the capital stock and franchise at $4,998,670. In due course under that assessment appellee paid all the taxes on all its property, as well as the so-called capital stock tax. In the re-assessment after the decision of the Supreme Court of Illinois in the *mandamus* case referred to, the full value of capital stock including franchise was fixed for April 1st, 1900, at $8,000,000. The record contains no showing and hardly a pretense for a claim that appellee's entire property was worth much if any more than the $5,000,000 invested and for which stock was outstanding. Outside of the testimony of the members of the State Board of Equalization as to the motives of apprehension and misapprehension under which the re-assessment was made, the record contains no justification for the higher value of the re-assessment.

In due course and in response to collector's warrants issued under the first assessment, appellee paid taxes amounting to $84,986.05. In addition to this, in compliance with the order of the Circuit Court based upon the master's report, appellee paid $7,216.95. Under the re-assessment an additional payment of $60,813.43 was demanded, together with the penalties added by the county clerk under the supposed authority of the Illinois statute. Exclusive of questions

of penalties in any form, interest or otherwise, there is a principal balance or sum of $56,847.21 still demanded of appellee and which the Circuit Court has found it is not equitable that appellee should be obliged to pay.

There is one special circumstance, however, which distinguishes and strengthens it, namely: the inclusion in the re-assessment of capital stock representing the investment of appellee in property situated in the State of Indiana (Rec., printed pages 30, 32). The record was intended to contain only pleadings and other matters relating specially to this case as distinct from the Union Traction and other cases brought here at the same time, and involving the same questions except as to the taxation of property in Indiana; for one main record to cover matters common to all the cases was prepared in the Union Traction case by stipulation (Rec., 115). It is probable that some duplication appears in the records, and also it does not appear that the preliminary order of reference of April 30, 1902, or the order of June 28, 1902, confirming the master's preliminary report of June 9, 1902, and ordering a preliminary payment as a condition of receiving relief is in either this record or the Union Traction record. These two orders will be supplied by a supplemental transcript to be filed pursuant to stipulation.

To the argument for appellee in the Union Traction case reference is made for an extended statement of the facts which are common to these several cases.

The Circuit Court found from its own examination of the evidence reported by the master that the material allegations of the bill were sustained by the evi-

dence (Rec., 68, 71), and the master, upon a general reference "to take proofs and to report the evidence and his conclusions of fact," also reported to the same effect. (Union Traction Rec., 97, 98.) Shortly stated, the bill alleged, in substance, among other things, that a capital stock assessment for the year 1900 was made against appellee by the Illinois State Board of Equalization in the usual course of procedure, and after full information furnished to the board by appellee as to its property, its shares of capital stock and its indebtedness (Rec., 4, 302); that a tax to the amount of $14,642.25 was regularly extended upon this assessment, and was, in due time, regularly paid by appellee; that subsequently the State Board of Equalization, after more than half of its constituent membership had changed by an intervening election, made an entirely new capital stock assessment against appellee for the year 1900, ignoring the former one and ignoring the tax paid under the former one; that a tax to the amount of $60,913.43 had been extended against appellee under the second assessment; that to this tax the County Clerk of Cook County, under supposed authority of Section 276 of the Illinois General Revenue Law, had added the amount of $3,150.73 as a penalty for alleged failure on the part of appellee to pay its capital stock tax for 1900 in due time; that the total amount of $64,064.16 was demanded of appellee by the Tax Collector of the Town of South Chicago, Fitzgerald, under a warrant then in his hands; that this second assessment had resulted from certain *mandamus* proceedings against the Board of Equalization in the Circuit Court of Sangamon County, and

in the Supreme Court of Illinois, to which appellee was not a party and in which it had no right to be heard; that the first assessment had never been vacated in any proper judicial proceeding legally effective against appellee; that the making of the new assessment and the attempted collection of the tax under it constituted a taking of appellee's property without due process of law, in violation of the Fourteenth Amendment to the Constitution of the United States; that as a result of the *mandamus* proceeding the Board of Equalization was compelled to select, and did select, a few corporations, including appellee, out of the great body of similar corporations in the State of Illinois, and to assess them on an entirely different basis from that applied to the other similar corporations, whereby appellee was deprived of the equal protection of the laws, in violation of the Fourteenth Amendment to the Constitution of the United States, and was subjected to disproportionate taxation, contrary to the Constitution of the State of Illinois; that the first assessment against appellee had exhausted the power of the State Board of Equalization to make an assessment against appellee; that the second assessment was void; and that the collection of taxes extended under it would be a taking of appellee's property without due process of law.

It was further alleged that, if not entirely void, the second assessment was, nevertheless, excessive in making no allowance for the previous assessment and for the taxes paid thereunder; that under supposed duress of the writ of *mandamus* the Board of Equalization

had failed to exercise its independent judgment and discretion, and in particular had failed to equalize the second assessment by an appropriate reduction to make it reasonably uniform with the assessment judged by the board to have been made against other property in the state generally, whereby appellee was subjected to a greater burden of taxation than other persons and corporations on their property in Cook County and throughout the State of Illinois, in violation of the Fourteenth Amendment to the Constitution of the United States and also in violation of the Constitution of the State of Illinois; and that the penalty of $3,150.73 imposed by the county clerk had been imposed without authority of law and should be abated.

It was further alleged in the bill that unless the taxes were paid the Town Collector would be required to enforce collection by distraining upon and selling the goods and chattels of appellee; that appellee's property consisted largely of personal property, constituting an extensive telephone system furnishing telephone service to many thousand customers in different parts of the City of Chicago, so that a levy of said taxes by distress and sale would interfere with the operation of appellee's telephone system, embarrass and injure appellee's customers, and subject appellee to the danger of losing the property levied upon without any opportunity to test its rights by interposing any defense; that after payment of the taxes the collector would be bound to distribute them to numerous taxing bodies, and if appellee were compelled to institute actions against the taxing bodies a multiplicity of suits would inevitably be required; that the portion of the

taxes which, if paid, would go to the State of Illinois, could not be collected back by appellee by any legal proceedings whatever; that, even if it were possible to collect back from all the taxing bodies the taxes paid, such recovery would not include the costs and commissions incurred in the collection of the taxes; that the collection of the taxes would inflict an irreparable injury upon appellee; and that appellee had no complete or adequate remedy at law.

Appellee offered to pay whatever amount, if any, the court might think ought equitably to be paid by appellee, and prayed that the collection of the tax be permanently enjoined. A temporary injunction was granted on condition that appellee pay the further sum of $7,216.95, which amount was seasonably paid. The final decree (Rec., 70) found that this was a sufficient payment and granted a permanent injunction.

Upon the hearing of the case before the Master, appellee proved that a part of its tangible assets consisted of telephone lines extending through Lake and Porter Counties in the State of Indiana, which were assessed for taxation in 1900 by the State of Indiana in the amount of $43,620 (Rec., 30, 32). When the reassessment for 1900 was made by the Illinois State Board of Equalization, the only deduction for the value of tangible property made by the Board was for tangible property assessed by the Illinois local assessors (Union Traction Rec., 1065). No deduction from the value of appellee's capital stock was made by the Board on account of the tangible property located and assessed in the State of Indiana, although full information about appellee's property was furnished

the Board, both in 1900 and 1901. (Union Traction Rec., 217, 218.) The Circuit Court, however, ordered that the assessed value of appellee's property located outside of the State of Illinois be deducted from the full value of its capital stock. (Additional Transcript of Record, p. 2.)

It is not deemed necessary or desirable to present a full argument, which would necessarily cover the same ground as that which will be covered in the other similar cases before the court at this time, but important points will be presented and authorities cited in support of them.

POINTS AND AUTHORITIES.

I.

The allegations of the bill show a substantial claim in good faith arising under the federal constitution, and this is sufficient to give federal jurisdiction.

Pac. Elec. Ry. Co. v. *Los Angeles*, 194 U. S., 112.

City Railway Co. v. *Citizens' Street R. R. Co.*, 166 U. S., 557, 562.

II.

The allegations of the bill justify resort to a court of equity, and similar bills have been repeatedly entertained.

Mich. Cent. R. R. Co. v. *Powers*, 201 U. S., 245.

Coulter v. *Louisville & Nashville R. R. Co.*, 196 U. S., 599.

Fargo v. *Hart*, 193 U. S., 490, 503.

Peoples Nat'l Bank v. *Marye*, 191 U. S., 272.

Union Pac. Ry. Co. v. *Cheyenne*, 113 U. S., 516, 525.

Louisville Trust Co. v. *Stone*, 46 C. C. A., 299; 107 Fed., 305.

III.

The Supreme Court of Illinois holds that a capital stock tax is a tax on the property and assets of the corporation issuing such stock.

Porter v. *Rockford, R. I. & St. L. Ry. Co.*, 76 Ill., 561, 567-8.

Pac. Hotel Co. v. *Lieb*, 83 Ill., 602, 610-11.

O. & M. Ry. Co. v. *Weber*, 96 Ill., 443, 448, 453.

Keokuk & Hamilton Bridge Co. v. *The People*, 161 Ill., 132, 142-3.

The Supreme Court of Illinois, by its latest decisions on the subject, has also sustained a capital stock tax levied upon the entire capital stock of a bridge company whose property consisted of a bridge, a part of which was located in an adjoining state.

Quincy Bridge Co. v. *Adams County*, 88 Ill., 615.

Keokuk Bridge Co. v. *People*, 161 Ill., 132.

Same v. *Same*, 167 Ill., 15.

In this respect the latest decisions of the Supreme Court of Illinois are in direct conflict with the decisions of this court.

Louisville, etc., Ferry Co. v. *Kentucky*, 188 U. S., 385, 391.

Fargo v. *Hart*, 193 U. S., 490, 499-503.

Del., Lackawanna, etc., R. R. Co. v. *Penn.*, 198 U. S., 341, 352-361.

This court has frequently held that a tax on

the value of the capital stock of a corporation is a tax on the property in which that capital is invested, and in consequence no tax can be levied on capital stock which represents property that is otherwise exempt.

Bank of Commerce v. *New York City*, 2 Black., 620.
Bank Tax Case, 2 Wall., 200.
Pullman's Car Co. v. *Penn.*, 141 U. S., 18, 25.
Fargo v. *Hart*, 193 U. S., 490, 498-9.

In failing to deduct from the value of appellee's capital stock the value of its tangible property located and assessed for taxation in the State of Indiana, the State Board made its reassessment for 1900 cover *property of appellee located beyond the jurisdiction of the State of Illinois*, and the collection of the tax based upon the reassessment under such circumstances would amount to the taking of appellee's property without due process of law, from which appellee is protected by the Fourteenth Amendment to the Federal Constitution.

Del., Lackawanna, etc., R. R. Co. v. *Penn.*, 198 U. S., 341, 358-61.

IV.

The record exhibits in actual operation a process of depriving appellee of property. It shows an absence of due process of law, and shows that appelle has not been afforded the equal protection of the laws.

This court has carefully refrained from enunciating any general definition of "due process of law,"

and has likewise deliberately avoided unnecessary decisions upon the troublesome subject.

Davidson v. *New Orleans*, 96 U. S., 97, 104.
California v. *Pac. R. R. Co.*, 127 U. S., 1, 28.

It is however well settled that the prohibitions of the 14th Amendment refer to all agencies and instrumentalities of a state, legislative, executive and judicial.

Fayerweather v. *Ritch*, 195 U. S., 276, 297.
C. B. & Q. R. R. Co. v. *Chicago*, 166 U. S., 226, 233.
Scott v. *McNeal*, 154 U. S., 34, 45.
Yick Wo v. *Hopkins, Sheriff*, 118 U. S., 356, 373.
Neal v. *Delaware*, 103 U. S., 370, 397.
Davidson v. *New Orleans*, 96 U. S., 97, 104.
Strauder v. *W. Va.*, 100 U. S., 303.
Virginia v. *Rives, id.*, 313.
Ex parte Va., id., 339.

And "in determining what is due process of law, regard must be had to *substance*, not to form."

C. B. & Q. R. R. Co. v. *Chicago*, 166 U. S., 226, 235.

V.

In support of the theory that no state action is involved in this case and that a federal court could not take *jurisdiction* of it because, as said, whatever wrongful action has occurred has been the action of subordinate state officials, which is not to be imputed

to the state, counsel for appellants have cited a number of cases, including the following, decided in this court:

Virginia v. *Rives*, 100 U. S., 313.
Civil Rights Cases, 109 U. S., 3.
Barney v. *City of New York*, 193 U. S., 430.
Coulter v. *Louisville & N. R. R. Co.*, 196 U. S., 599.
Owensboro Water Works Co. v. *Owensboro*, 200 U. S., 38, 45.
Carfer v. *Caldwell*, 200 U. S., 293.
Kentucky v. *Powers*, 201 U. S., 1.

It seems hardly necessary to do more than suggest to this court,—what the quotations made by counsel for appellants themselves show,—that the cases cited have no application to this record. Several of them were removal cases and related to the right of removal under Section 641 of the Revised Statutes, enacted pursuant to Section 5 of the Fourteenth Amendment, and repeatedly held to be narrower than the Amendment. The *Civil Rights Cases* held merely that it was not the intention of Section 5 of the Amendment to invest Congress with the power to enact a general system of municipal laws, but only with the power to pass corrective legislation. If it was held in that case

> "that Congress had no power to legislate in such a way as to confer upon a federal court original jurisdiction in protecting life, liberty and property against the unauthorized acts of individuals, or that of state officials acting contrary to state laws,"

the language to that effect has not been found. The other cases involved only violations of state laws or constitutions under circumstances calling for no federal relief.

VI.

The second capital stock assessment was made under the assumed authority of Section 276 of the General Revenue Law of Illinois, which is as follows:

> "If any real or personal property shall be *omitted* in the assessment of any year or number of years, or the tax thereon for which such property was liable, from any cause has not been paid, or if any such property, by reason of defective description or assessment thereof, shall fail to pay taxes for any year or years, in either case the same, when discovered, shall be listed and assessed by the assessor and placed on the assessment and tax books. The arrearages of tax which might have been assessed, with ten per cent. interest thereon, from the time the same ought to have been paid, shall be charged against such property by the county clerk. It shall be the duty of county clerks to add uncollected personal property tax to the tax of any subsequent year, whenever they may find the person owing such uncollected tax assessed for any subsequent year."

A *mandamus* suit was brought against the members of the Board of Equalization to compel a reassessment of the capital stock of appellee and certain other corporations on the ground that their first assessments were so low as to be presumptively fraudulent and to be therefore no assessments at all. The case was practically tried upon demurrer to the petition, for while the members of the board answered it, they relied for their defense solely upon technical grounds, and primarily upon the proposition that they had duly made their assessments and that their judgment and discretion

could not be interfered with by the court. Neither appellee nor any other of the corporations affected was a party to the *mandamus* proceeding, in which the writ was ultimately awarded. The decision of the lower court was sustained in the state Supreme Court (*State Board of Equalization* v. *People*, 191 Ill., 528). On the hearing in the Supreme Court, counsel for Chicago Edison Company, one of the corporations, appeared and asked to be heard *amicus curiae* on behalf of that company, but the application was denied.

VII.

The *mandamus* proceeding itself, sustained as it was by the Supreme Court of the state, was an unlawful attempt of the state, through its highest court, to deprive appellee of its property without due process of law, for the proceeding necessarily affected the interests of appellee, and no judgment could lawfully be rendered in the case without the presence of appellee in the proceeding and without its having an opportunity to be heard. The unlawfulness of the proceeding cannot be better set forth than by referring to a subsequent decision of the Supreme Court of Illinois, the nature of which is well shown by the following syllabus:

> "1. MANDAMUS—*one whose rights are shown by petition to be involved should be made a party.* In a proceeding for *mandamus*, when a person is shown to be within the jurisdiction of the court and shown to have a legal interest which will be collaterally determined by the judgment if rendered as prayed in the petition, the court is with-

out jurisdiction to adjudicate the cause until such person has been made a party.

2. PARTIES—*when want of a necessary party requires reversal without plea or objection.* Omission of a necessary party to a petition for *mandamus,* which appears upon the face of the record, requires the reversal by the Supreme Court, of its own motion, of a judgment awarding the writ, notwithstanding no plea based upon such omission was filed and no objection is made by either party calling attention to the omission.

3. SAME—*party to be removed from office is a necessary party to mandamus.* In a *mandamus* proceeding against the civil service commissioners to compel them to cancel the certificate of eligibility of an officer appointed by them, remove him from office and certify the name of the petitioner in his stead, the officer to be removed is a necessary party, without whom the court has no jurisdiction to award the writ."

Powell v. *The People,* 214 Ill., 475.

Appellee was at all times within the jurisdiction of the court and could have been served with a summons.

VIII.

The State Supreme Court held, in the *mandamus* proceeding, that the original capital stock assessments for 1900, made December 3rd of that year, against appellee and the few other corporations named in the proceeding, were to be treated as no assessments, and that the new rules of the board under which these original assessments and all other capital stock assessments against other similar corporations in the state for that year had been made by the state board were improper, primarily because they contemplated that

funded corporate indebtedness should not be taken into account in fixing capital stock valuations; and it approved the judgment of the lower court that new assessments should be made in substantial accordance with certain old rules which the board had abrogated at the time of adopting the new ones.

This decision was extraordinary as a judgment, although it may (perhaps) be sound as an exposition of legal principles. It is extraordinary that the court failed to notice its inevitable effect upon interests not before the court and having no opportunity to be heard. The truth probably is that the court possibly resented and distrusted the "what-are-you-going-to-do-about-it" attitude of the state board. It is not difficult to understand that the state board had long been accustomed to the general and notorious undervaluation of property, down to 10 per cent., and even lower, of a legally required "fair cash value"—as in the Cook County assessment of 1898, hereinafter mentioned; that a capital stock assessment is not infrequently regarded by laymen as an assessment of shares of stock; and that the members of the state board were, no doubt, very familiar with a practice in their local communities of deducting indebtedness from the value of property to be taxed.

IX.

As the *mandamus* proceeding conferred no power upon the Board of Equalization, the second assessment has no better legal standing than it would have if made

by the board voluntarily under Section 276 of the Revenue Law. That section is unconstitutional and void as applied to such a situation as this record presents where there has been one assessment and an attempt is made to levy a second one, ignoring the first. The section does not provide for due process of law, and neither in it nor anywhere else in the statute is there any requirement for notice to an interested property holder. While a property owner must take notice of the established time and place of meeting of a board authorized to make a *current* assessment, there can be no occasion for him to take notice that such a board may assume the right to ignore a past assessment against him, and may proceed to make a new assessment on the ground that the property affected was omitted from the former one. While in this instance appellee did know in advance of the proposed reassessment, it had no opportunity to question the right and power of the board to make it, and, although it was heard by the board as a matter of grace and favor respecting the amount of it, such hearing cannot save the statute from unconstitutionality.

Security Trust and Safety Vault Co. v. *Lexington,* 27 Sup. Ct., 87.

Pittsburg, Cin., Chgo. & St. L. Ry. Co. v. *Backus,* 154 U. S., 421.

Weyerhaueser v. *Minnesota,* 176 U. S., 550, 556.

Winona & St. Peter Land Co. v. *Minnesota,* 159 U. S., 526, 535-8.

Davidson v. *New Orleans,* 96 U. S., 97.

The power of the board to assess the capital stock

of appellee had been exercised and exhausted until the original assessment should be set aside in a proper legal proceeding.

Wabash R. R. Co. v. *The People,* 196 Ill., 606, 608.

X.

It will be noticed that neither by the Illinois courts nor by the state board was anything said or done about giving appellee a credit for the tax already paid under the original assessment. What was done was in fact to burden appellee with *two* assessments. Whatever the *form* in which this was done, the result was contrary to the fundamental principles of justice which are an element in "due process of law."

C., B. & Q. R. R. Co. v. *Chicago,* 166 U. S., 226, 335.

Of course appellee is equitably entitled to such a credit.

Mix v. *The People,* 116 Ill., 265, 273.

XI.

Under the Constitution of Illinois the legislature *may* provide for some differences in taxation from time to time, "by a general law uniform as to the class upon which it operates," but it has never exercised this power, and under existing laws certainly all capital stock assessment and taxation must be uniform and proportionate.

C. & A. R. R. Co. v. *Livingston County,* 68 Ill., 458.

Law v. *The People,* 87 Ill., 385, 404.
City of Chicago v. *Fishburn,* 189 Ill., 367, 377.

The Supreme Court of Illinois has in late years refused to *declare taxes invalid* in cases where objections have been based solely on violations of the constitutional requirement of uniformity; but it has commonly held, as in the *Law* case, *supra,* that it is the *duty* of assessing officers and bodies to observe the requirement.

Keokuk & Hamilton Bridge Co. v. *The People,* 161 Ill., 132, 138.
Keokuk & Hamilton Bridge Co. v. *The People, id.,* 514, 519-20.

In this case is shown an "unequal and unjust administration" of law, practically under the direction of the state supreme court, not unlike that condemned in respect of the fair-seeming San Francisco laundry ordinance.

Yick Wo v. *Hopkins,* 118 U. S., 356, 373.

Though it is well understood that the 14th Amendment was never intended to compel the states to adopt an "iron rule of uniformity" in their systems of taxation, and that this court interferes reluctantly with state taxation, it is equally true that this court does apply the amendment to state taxation cases upon proper occasion.

It has expressly declared in significant language that rights secured by the supreme law of the land cannot be impaired under the state taxing power.

Connolly v. *Union Sewer Pipe Co.,* 184 U. S., 540, 563.

And it is understood to have interpreted very recently the "equal protection" clause of the 14th Amendment to mean that state taxation must apply uniformly to corporations of the same class.

Mich. Cen. R. R. Co. v. *Powers,* 201 U. S., 245.

In the cases now before the court it is shown that the highest taxing body in the state, and the highest court in the state, have together imposed upon a few corporations taxation upon a radically different basis from that applied for the same period to other corporations of the same class throughout the state generally. If this is not such a denial of the equal protection of the laws as justifies a Federal court in exercising original jurisdiction and granting relief under equitable circumstances it is hard to conceive of any inequality of taxation that could be.

XII.

The inequality in the second assessment was proved by the testimony of members of the Board of Equalization familiar with the matter, and this was in accordance with a course frequently followed in other cases in this court.

Pelton v. *National Bank,* 101 U. S., 143, 146-7.
Cummings v. *National Bank,* id., 153, 161-3.
Pittsburgh, &c., Ry. Co. v. *Backus,* 154 U. S., 421, 434.
Maish v. *Arizona,* 164 U. S., 599, 611.

The Supreme Court of Illinois criticized the failure of the members of the Board of Equalization to tes-

tify in the mandamus suit, saying that they were competent witnesses, and might have been called to explain their methods.

People v. *Board of Equalization*, 191 Ill., 528, 551.

In view particularly of this criticism upon the members of the board for not testifying it is submitted that their testimony ought to be considered proper in the cases before this court. It did not impeach what the members had done, nor set forth "mental operations," but it explained their methods of procedure.

But without the testimony of members of the Board of Equalization the decision of the Supreme Court in the *mandamus* case sufficiently shows a part of the inequality and injustice involved in the reassessments, for that decision is partially predicated upon the proposition that the board had not taken into account the funded indebtedness of corporations in making its original assessments. The court held that the board should have done this, and the writ of mandamus expressly required such action as to the few corporations whose assessments were under examination. It will be presumed, of course, that the members of the board in making the reassessments obeyed the writ irrespective of any testimony of their own.

The truth is, of course, that the reassessments were altogether court-made assessments, in which the members of the board exercised little or no independent judgment and discretion, but endeavored to follow implicitly the court's writ and command. There was neither due process of law, nor the equal protection of the laws.

XIII.

Passing from the purely legal aspects of the case to a consideration of the equitable character of the decree of the court below, it is proper to compare the two methods adopted respectively by the court and by the Board of Equalization in determining the value of appellee's capital stock for the year 1900. The evidence in the record establishes that, with general conditions substantially unchanged from April 1, 1900, to April 1, 1901, the Board of Equalization deliberately adopted for its 1901 assessments a basis for taxation thirty per cent. lower than the basis adopted for the reassessment of 1900, and that the Board would have equalized the reassessment of 1900 upon a seventy per cent. basis had it felt authorized to exercise its independent judgment. (Brief for appellee in Traction case, pp. 71-5, 80-1.) In comparing the two methods, we must, therefore, equalize the Board's figures by deducting thirty per cent. of the full value of appellee's capital stock and franchise.

The method adopted by the master and approved by the court is based upon the actual earnings of appellee capitalized at six per cent. (Rec., 61), which is a fair and reasonable basis. That method produced the following showing:

Gross Revenue, 1900		$3,129,238.18
Deductions to ascertain Net Earnings of property owned April 1, 1900:		
Gross Expenses (Includes $168,695.30 Depreciation)	$2,258,780.24	
Additional for a total 6% Depreciation	206,786.20	
Earnings from Stock Issued after April 1, 1900	140,233.60	
Unearned Real Estate Credits	23,826.59	
		2,629,626.63
		499,611.55
Deduct Additional 1900 Tax		7,211.55
1900 Net Earnings		492,400.00
Capitalized at 6%		8,206,666.00
Less Assessed Value Outside of Illinois		43,620.00
		8,163,046.00
Equalized by deducting 30%		5,714,132.00
Divide by 5		1,142,826.00
Less Equalized Value Illinois Tangible Personal Property		876,124.00
Net Capital Stock		266,702.00
Less Capital Stock on which Tax has been paid		175,000.00
		91,702.00
Rate for 1900 Taxation		.0787
Additional Tax to be paid for 1900		7,216.95

By this method appellee was obliged to pay and did pay an additional tax of $7,216.95, which brought its total taxes for the year 1900 to the sum of $92,203. (Rec., 33.)

On the other hand, had the Circuit Court conformed to the method of computation adopted by the State Board in determining capital stock taxes generally in 1901,—the valuation of the capital stock of appellee actually fixed by the Board in making the reassessment for 1900,—the showing is as follows:

Full value of Capital Stock, including franchise (C. U. T. Co. Rec., 450)		$8,000,000.00
Equalized at 70%		5,600,000.00
Assessed or one-fifth value		1,120,000.00
Deduct equalized assessed value of tangible property (Rec., 60)	$876,124.00	
One-fifth of assessed value of property outside of state of Illinois (Rec., 56)	8,724.00	
		884,848.00
Net equalized assessed value of Capital Stock		235,152.00
Taxes extended at .0787		18,506.46
Deduct tax paid on original assessment.		14,642.25
Leaves to be paid		3,864.21
Actually paid under order of court		7,216.95
Excess paid		3,352.74

In other words, adopting the figures of the State Board, less 30 per cent. for equalization, and deducting therefrom the true assessed value of the tangible property, and further deducting the assessed value of the tangible property outside of the state, it appears that appellee, under the order of the Circuit Court, has actually paid about $3,350 more than it would have been required to pay had the Board equalized the reassessment upon the same basis applied to other property by it in 1901.

This comparison shows that in seeking equitable relief at the hands of the Circuit Court appellee was in nowise seeking to avoid just taxation, but was only asking for the same treatment, upon a similar basis of valuation, that was accorded other taxpayers in Cook County by the assessing bodies of the state.

On pages 31 to 33, inclusive, of their brief in this case, counsel for appellants have submitted certain computations which require some notice. The computation numbered "1" is the same as the method first above given. The computation numbered "3" is similar to the second method above given, except that counsel for appellants have incorrectly stated the equalized assessed value of appellee's tangible property as $824,734, whereas the correct figure is $876,124, as testified to by Mr. Mosley, Secretary and Treasurer of appellee. It should be noted that at the time of making appellee's report to the State Board appellee's secretary had not then been able to learn how much the Assessors and Boards of Review had increased the Company's returns; so that the true assessed value of the tangible property was considerably understated, for it appeared by an accurate and absolute list, which was available by the time of the hearing before the master in this case, that the aggregate of the local assessments was in excess of the amount reported. (Rec., 59-60.) Counsel for appellants have also omitted to deduct the assessed value of property outside of the State of Illinois, aggregating $43,620, one-fifth of which (adopting the theory of taxation observed in Illinois) is $8,724. In these respects, only, do our figures differ from the figures of counsel for

appellants. The difference in result, however, is that instead of appellee's being required to pay an additional tax of $1378.23, as claimed by counsel for appellant, appellee has in fact paid $3,352.74 more than it would have been required to pay had the Board equalized its reassessment upon the same basis applied to other property by it in 1901.

That equity would require a deduction for equalization of at least thirty per cent. from the full capital stock valuation fixed by the State Board of Equalization against appellee in the second assessment for 1900, is entirely clear quite apart from the testimony of the members of the State Board of Equalization. The total local assessments in Cook County are instructive.

The assessed values of the tangible property locally assessed in Cook County and returned to the State Board of Equalization for the years 1898, 1899 and 1901 were as follows:

For 1898 (full and assessed valuation)
(U. T. Rec., 815).....$180,041,162.00
For 1899, 1/5 valuation (id., 846)..... 378,828,291.00
For 1900, 1/5 valuation (id., 1037)..... 260,564,522.00
For 1901, 1/5 valuation (id., 1253)..... 365,191,329.00

The local assessment for 1898 has no particular importance here, but is inserted merely for the better information of the court. It represents the full valuation as well as the assessed valuation made by the local assessors in Cook County for the year 1898, and it was equalized by the State Board by an average addition of 29 per cent. In 1898 a statute was passed providing for the assessment thereafter of property at one-

fifth of its full value, and placing a new limit, intended to be applicable to the County of Cook, upon the levying of taxes by tax levying bodies. The taxing machinery was also greatly changed under this statute, with the result that the assessed or one-fifth value of 1899 is thus seen to have been more than double the supposed full valuation of 1898.

The Cook County local assessments for 1899, 1900 and 1901 were equalized by the State Board of Equalization with the following result:

In 1899 the Board deducted 5% from certain classes of property, 2% from some others, and nothing from the balance, making an average deduction of 4%; in 1900 the Board made an average addition of 10%; and in 1901 the Board made no change; so that the local assessed valuations for the county, as thus equalized, became the following:

1899	$364,147,735.00
1900	286,620,975.00
1901	365,191,329.00

The great reduction in the local assessment of 1900 from that of 1899 received much attention at the hands of the State Board which adopted various resolutions concerning it, finding, among other things, that it was a decrease of 31.2%, and that it involved a substantially new assessment of real estate declared by the Attorney General to be unlawful. (Proceedings of the State Board of Equalization for 1900, Un. Trac. Rec., 866, 869, 871.) So far as the State Board of Equalization was concerned, however, this assessment had to stand, and the State Board could add only a limited increase under its statutory powers.

The fair equalized taxable valuation of the property of appellee for the year 1900, as reported by Master in Chancery Bishop June 9, 1902, and confirmed by the court, under the method of valuation adopted by Judges Grosscup and Humphrey, was $8,163,046. (Rec., 61.)

The total equalized local assessment for Cook County in 1900 was only 78½% of that for 1901, and probably the actual property was about the same in both years. Appellee reported in 1901 $2,000,000 more outstanding stock than in 1900. (Union Traction Rec., 1125.) Taking the additional stock at only its par value and deducting 70% of this amount, or $1,400,000 (being the equalized valuation), from the full equalized valuation of the company's property for the year 1901, which was determined by the Board to be $8,575,000 (Union Traction Rec., 1125), leaves $7,175,000 as the full equalized valuation *in 1901* of the same property which appellee had in 1900. If the full equalized valuation of the property of appellee for 1900 be taken as 78½% of the full equalized valuation put upon the same property for 1901, the amount would be $5,632,375, or $2,530.671 less than was found by the master under the method adopted in the federal court. On the basis of an equalized full valuation of $5,632,375 and a tax rate of 7.87% on the *assessed,* or one-fifth, valuation, the taxes of appellee for 1900 would have been $88,653.58. Appellee actually paid $92,203 (Rec., 33) after complying with the order of the court in this case.

The following figures show the utmost possible difference in taxation between the method of the federal court and the method of the State Board of Equalization after allowing the specific abatements claimed, including an abatement of only 30% for equalization:

Taxes paid under original assessment (incl. $14,642.25 of capital stock taxes)		$ 84,986.05
Capital stock taxes extended under second assessment and *mandamus* writ (at rate of 7.87 cents on *assessed* valuation)		60,913.43
Penalty added by County Clerk under supposed authority of Sec. 276 of Gen. Revenue Law of 1872; apparently six months' interest at annual rate of 10 per cent		3,150.73
TOTAL, as extended		$149,050.21
Equitable deductions:		
For original capital stock tax	$14,642.25	
For above penalty	3,150.73	
For tax on property outside of state at assessed value of $43,620	686.65	
For equalization (taxes on 30 per cent. of full valuation)	37,776.00	
Total deductions		56,255.63
Total taxes less above deductions		92,794.58
Original tax payment		84,986.05
Additional payment required as equitable by Judges Grosscup and Humphrey		7,216.95
		$92,203.00
Maximum amount of taxes, allowing only 30 per cent. for equalization, according to method of valuation employed by Board of Equalization		92,794.58
Maximum amount of just taxes according to method of valuation adopted in Federal Court (being amount actually paid)		92,203.00
Full difference in amount of taxes according to the two methods		$591.58

It is apparent that a much larger allowance than 30 per cent. should justly have been made for equalization for 1900, when compared with the equalization of 1901. Thirty per cent was the deduction for equalization fixed for 1901 by the state board, which decided that tangible property generally in Illinois had not been given for that year a full valuation of more than 70 per cent. of its true value. As the Cook County assessment for 1900 was less than 4/5 of that for 1901, it is reasonably clear without the testimony of members of the State Board of Equalization that tangible property in Cook County could not have been valued upon as high a basis as 70 per cent. in 1900. As before stated, a full equitable payment from appellee for 1900 would have been $88,653.58, and it actually paid $92,203. And it follows from this that the amount of the additional tax payment required by the Circuit Court to be made by appellee as a condition of receiving relief was too large and not too small.

XIV.

It is apparent also that no injustice has been done any of the appellants by the decree of the court below and it should be affirmed.

Respectfully submitted,

WM. G. BEALE,
Of Counsel for Chicago Telephone Company, Appellee.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, A. D. 1906.

No. 429.

SAMUEL B. RAYMOND, COUNTY TREASURER OF COOK COUNTY, ILLINOIS, AND EX OFFICIO COUNTY COLLECTOR OF COOK COUNTY, ILLINOIS; JOHN J. HANBERG, HIS SUCCESSOR AS SUCH COUNTY TREASURER AND COUNTY COLLECTOR, ET AL., APPELLANTS,

vs.

CHICAGO TELEPHONE COMPANY.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS.

APPELLANTS' REPLY BRIEF.

The greater portion of the argument of counsel for appellee deals with matters that have been fully answered by us in our reply brief filed in the case of the Chicago Union Traction Co., No. 424. Counsel have, however, pointed out certain features that are special to this case. To avoid repetition in so far as counsel's arguments have been fully answered by us in the reply brief in the Union Traction Company case, we will refer the court to the appropriate pages of that brief. The special features bearing on this case only will be dealt with separately.

**

I.

The circuit court was without jurisdiction (Reply Brief, Chicago Union Traction Company Brief, pp. 13 to 32).

II.

The acts complained of could not be imputed to the State (Chicago Union Traction Company Brief, pp. 32 to 38).

III.

The appellee was not deprived of its property without due process of law (Chicago Union Traction Company's Brief, pp. 38 to 42).

IV.

Appellee has not been denied the equal protection of the law (Chicago Union Traction Company Brief, p. 42).

V.

The valuation fixed by the State Board of Equalization upon the capital stock of appellee was $1,000,000 less than the undisputed evidence shows that the fair cash market value of said stock amounted to on April 1, 1900. George A. Yuille, a Chicago stock broker, testified that the market value of the stock of appellee on April 1, 1900, was $180 per share (C. U. T. Co. Trans., 304). According to the above evidence, the fair cash market value of the stock of appellee on April 1, 1900, would amount to $9,000,000. It thus appears that the State Board of Equalization in the reassessment complained of valued the stock of appellee at $1,000,000 less than the undisputed evidence shows was its fair cash market value on April 1, 1900. Our evidence in that regard is not disputed.

VI.

The claim that the members of the State Board of Equalization were coerced into adopting the valuations furnished by the Teachers' Federation and the attorneys for the relators in the mandamus suit is equally untenable. The undisputed evidence shows that the State board fixed the fair cash market value of the stock and bonded indebtedness of appellee at $4,250,000 less than the valuation furnished to said board by the relators and their attorneys.

The valuation placed upon the capital stock of appellee in the statement furnished to the State board by the relators was (Complainant's Exhibit B, C. U. T. Co. Trans., 112)..	$12,250,000
The value fixed on the appellee's capital stock by the State board in the reassessment complained of was (C. U. T. Co. Trans., 242)....	8,000,000

It is certainly idle to say that the State Board of Equalization was not in the exercise of its independent judgment, but followed blindly the contention of the relators, when we bear in mind that the valuation fixed by the State board differed from and was a great deal less than the figures furnished by the relators and their counsel. This argument becomes especially pertinent when we examine the figures furnished by the relators with reference to all the other corporations who were defendants to the mandamus suit, and the valuations fixed by the State board, and find that in every instance the valuations fixed by the State board were far less than the figures furnished to the board by the relators.

VII.

Among the many errors committed by the circuit court to the detriment of appellants was one of giving the appellee credit for an assessed value of $43,620, on the theory that property to that amount located beyond the State of Illinois

was included in the reassessment complained of. There are many reasons why the circuit court erred in that regard.

First. There is no claim made in appellee's bill of complaint that the State board assessed property located outside of the State. It is elementary that a complainant cannot recover for a cause of action not alleged, or even suggested, in his bill of complaint.

Second. There is no competent evidence in this record tending to show that any property located outside of the State of Illinois was included in the reassessment complained of. The only proof relied upon in that regard is the testimony of four out of the twenty members of the State board. Testimony of such members was incompetent (C., B. & Q. Ry. Co. *vs.* Babcock; Lawyers' Co-operative Publishing Company's advance sheet of the Reports of the Supreme Court of the United States, April 1, 1907, page 326).

Third. Where a deduction is demanded for property exempt from taxation it is the duty of the party claiming such exemption to request the board to act upon such alleged exemption and to have the action of the board, or its refusal to act thereon, noted in the record. Where a party has failed to do this, he cannot come into a court of equity for relief. The precise question was before this court in the case of C., B. & Q. Ry. Co. *vs.* Babcock, *supra*. It was there contended, as in the case at bar, that tangible property permanently located outside of the State had been assessed. In that case, as in the case at bar, the record on its face did not disclose any such assessment of exempted property. This court there held that the record was not in such a condition that the railway company could raise the point in a bill in equity, and said (p. 327):

> "If the roads had wished an express ruling by the board upon the deductions which they demanded, they could have asked for it, and could have asked to have the action of the board, or its refusal to act, noted in the record. It would be time enough to offer other evidence when such a request had been made and refused."

VIII.

Counsel for appellee say that it is apparent without argument that the Civil Rights cases, 109 U. S., 3, and the Removal cases, cited by us, arising under section 641, have no application to questions arising under the 14th amendment. In this contention, so boldly asserted, counsel run counter to the explicit decision of this court, for in Barney *vs.* The City of New York, 193 U. S., 430, this court cited those very cases (Opinion, page 437) in support of the proposition that in that case the deprivation of property was not *the act of the State within the 14th amendment,* but merely the unlawful and unauthorized act of State officers.

IX.

Counsel for appellee seem to assume that we claim that appellee should only be required to pay a balance of $1,378.23. In that contention counsel are in error. Our contention was and is that if the circuit court had jurisdiction of this case and the power to make a reassessment, that reassessment should have been made in accordance with the laws of the State of Illinois. Computing the amount of taxes to be paid by appellee in accordance with the laws of the State of Illinois and giving appellee credit for all sums previously paid, deducting interest and penalties, appellee is still owing $39,054.23. We made the computation contained in table 3 (Original Brief, p. 32) merely for the purpose of showing that even on the assumption that there was evidence in this record to the effect that the reassessment made upon the

capital stock and franchises of appellee was not equalized with the assessments made upon the other property in the State, still the computation of the circuit court was still erroneous. We respectfully submit that, in any view of this case, the judgment of the circuit court will have to be reversed.

JAMES HAMILTON LEWIS,
Corporation Counsel of the City of Chicago,
DAVID K. TONE,
Special Counsel for said City,
HARRY A. LEWIS,
County Attorney of Cook County,
WILLIAM F. STRUCKMANN AND
FRANK L. SHEPARD,
Assistant County Attorneys of said County,
WILLIAM H. STEAD,
Attorney General of the State of Illinois,
GEORGE B. GILLESPIE,
Special Assistant Attorney General of said State,
Solicitors for Appellants.

(20,395.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1906.

No. 430.

SAMUEL B. RAYMOND, COUNTY TREASURER OF COOK COUNTY, ILLINOIS, AND *EX OFFICIO* COUNTY COLLECTOR OF COOK COUNTY, ILLINOIS; JOHN J. HANBERG, HIS SUCCESSOR AS SUCH COUNTY TREASURER AND COUNTY COLLECTOR, ET AL., APPELLANTS,

vs.

CHICAGO CONSOLIDATED TRACTION COMPANY.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS.

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1 In the Circuit Court of the United States for the Northern District of Illinois, Eastern Division.

26610.

CHICAGO CONSOLIDATED TRACTION COMPANY

vs.

SAMUEL B. RAYMOND, County Treasurer of Cook County, Illinois, and *ex-officio* County Collector, Cook County, Illinois, and JOHN J. HANBERG, His Successor, as County Treasurer of Cook County, Illinois, and *ex-officio* County Collector of Cook County, Illinois, and *ex-officio* Town Collector of the Town of North Chicago, and THE CITY OF CHICAGO.

Mr. W. W. Gurley, Solicitor for Complainant.
Mr. James Hamilton Lewis, Mr. David K. Tone, Mr. Harry A. Lewis, Mr. William F. Struckman, Solicitors for Defendants.

2 Pleas in the Circuit Court of the United States for the Northern District of Illinois, Eastern Division, in Chancery sitting at the United States Court room, in the said District and Division, before the Honorable Peter S. Grosscup, Circuit Judge of the United States for the Seventh Judicial Circuit, on Wednesday, the twenty-fifth day of July, being one of the days of the regular July Term of said Court, in the year of our Lord one thousand nine hundred and six, and of our independence the one hundred and thirty-first year.

MARSHALL E. SAMPSELL, *Clerk.*

3 In the Circuit Court of the United States for the Northern District of Illinois.

26610.

CHICAGO CONSOLIDATED TRACTION COMPANY

vs.

SAMUEL B. RAYMOND ET AL.

Be it remembered that on this day to-wit: the fifteenth day of January, 1903, there was filed in the clerk's office of said Court in the above entitled cause a certain Bill of Complaint in words and figures following to-wit:

4 *Bill of Complaint.*

UNITED STATES OF AMERICA,
Northern District of Illinois, Northern Division, ss:

In the Circuit Court of the United States in and for the Northern District of Illinois.

To the Judges of the Circuit Court of the United States for the Northern District of Illinois, in Chancery Sitting:

Your orator, the Chicago Consolidated Traction Company, a corporation organized and subsisting under and by virtue of the laws of the State of Illinois, and a citizen of said state, brings this its bill of complaint against Julius Salomon, Town Collector of the Town of North Chicago, in the City of Chicago, County of Cook and State of Illinois, and against Samuel B. Raymond, County Treasurer and *ex-officio* County Collector of said county, defendants, both of said defendants being citizens of said state and inhabitants of the Northern division of said district, residing within said City of Chicago and County of Cook. And thereupon your orator complains and states as follows:

First. That your orator is a corporation organized and subsisting under and by virtue of the general incorporation laws of the State of Illinois; and is now, and has been for years, the owner of
5 street railways in said county of Cook; and is now, and for years has been, engaged in the business of operating said street railways within said county of Cook, and within the Town of North Chicago, and other towns in said county; and has its office and principal place of business in said Town of North Chicago.

Second. That the defendant, Julius Salomon, is town collector of said Town of North Chicago, duly elected by the voters of said town, and as such town collector is charged by law with the duty of collecting from the several persons named in the Town Collector's books, when delivered to him by the County Clerk of said county, the several sums of personal property taxes therein extended opposite the respective names of such persons. In case any person or corporation named in said books shall neglect or refuse to pay personal property taxes, extended against him in said books, said defendant is authorized and required by law to collect such taxes by distress and sale of goods and chattels of such person or corporation.

Third. That the defendant, Samuel B. Raymond, is County Treasurer of said county, duly elected by the voters of said county, and is also *ex-officio* County Collector of said County. At some time between the 10th and 31st days of March, 1902, the defendant, Julius Salomon, as such Town Collector, will be required by law to return to the defendant, Samuel B. Raymond, as such County Collector, the tax books for 1901, heretofore received by said Town Collector from said County Clerk, and to make final settlement for the amount of taxes placed in his hands for collection. If it shall then appear from said tax books so returned that any person or corporation mentioned

therein has failed to pay the personal property taxes extended
6 against such person or corporation, said defendant, Samuel B. Raymond, as such County Collector, is then charged by law with the same duties, and may proceed in the same manner for the collection of such personal property taxes as is provided in the case of town collectors, and is required to collect the same by distress and sale, if necessary.

Fourth. That in the year 1900 the Board of Assessors of Cook County was furnished with full information as to all the tangible property, real and personal, in said Cook County, owned by your orator on the first day of April, 1900; that said Board of Assessors in said year duly assessed the full value of your orator's tangible personal property for the year 1900 at the sum of one million, seventy thousand, seven hundred dollars ($1,070,700.00); and also assessed the full value of your orator's real property for the year 1900 at the sum of two hundred and thirty-eight thousand, three hundred and ninety-seven dollars ($238,397.00); that thereafter your orator, in response to notice, appeared by its counsel before the Board of Review of Cook County, a body of duly elected officers of said county, authorized by law, among other things, to red[illegible]r increase the real and personal property assessments of persons [illegible]d corporations owning property in said county, and submitted to said Board of Review such information relative to the property of your orator as was requested and desired; that thereupon said Board of Review increased the assessment of your orator's personal property to the sum of one million, ninety-nine thousand, five hundred and fifty dollars ($1,099,550.00); and reduced the assessment of your orator's real property to one hundred and fifty-six thousand, three hundred and seventy dollars ($156,370.00), so that the full value of all the tangible real and personal property owned by your orator in the
7 said county on the first day of April, 1900, as finally fixed by said Board of Review, was one million, two hundred and fifty-five thousand, nine hundred and twenty dollars ($1,255,920.00), and the total assessed value, for all purposes of taxation (being one-fifth of said full value), was two hundred and fifty-one thousand, one hundred and eighty-four dollars ($251,184.00); that all the real property owned by your orator is; and was in the year 1900, situated in several different towns in the County of Cook and State of Illinois; and that it was all assessed by the Board of Assessors and Board of Review of Cook County, in the year 1900, in like manner, and upon the same basis as other real property situated in the said towns respectively.

Fifth. That the Board of Equalization of the State of Illinois, at its regular annual meeting for the year 1900, held at Springfield, during the month of September, 1900, ascertained and determined that in order to bring the assessed value of personal property and of the city lots in Cook County to a state average, as required by law, an addition should be made to the assessed value of the personal property and of the city lots in said county, as fixed by said Board of Review of Cook County, and such addition was accordingly made by said State Board of Equalization and was in due course certified to the County Clerk

of Cook County; that on making such increase it was adjudged and determined by said State Board that the basis and standard of assessment throughout the state was then uniform, and that as a result of such increase the total full valuation of all property owned by your orator on the first day of April, 1900 in said County of Cook and there locally assessed, as determined by said Board of Review and equalized by said State Board, was fixed at the sum of one million,
8 eight hundred and eighty-nine thousand, and sixty-five dollars ($1,889,065.00), and the assessed value of said property was fixed at one-fifth (1/5) thereof, being the sum of three hundred and seventy-seven thousand, eight hundred and thirteen dollars ($377,813.00); that at said session of said State Board, your orator appeared by counsel and gave information as to its property and its shares of capital stock and, at the same session, evidence and information in respect thereto were also submitted to said State Board by the Board of Assessors of Cook County and by others; that upon consideration of the matter, said State Board determined and fixed at its regular open session, the full value of the capital stock, including the franchise of your orator at five hundred thousand dollars ($500,000.00) over and above the value of your orator's tangible property, and in accordance with the provisions of the revenue law then in force, it decided, ascertained and set down the sum of one hundred thousand dollars ($100,000.00) as the assessed value of your orator's property designated as "capital stock including the franchise" for all purposes of taxation, all of which fully appears in and by the aforesaid record showing the proceedings of said Board.

Sixth. That the aforesaid assessment of one hundred thousand dollars ($100,000.00), so made as aforesaid, upon your orator's capital stock has never been vacated, annulled or set aside, but was duly certified to the auditor of public accounts of the State of Illinois, and was by him certified to the County Clerk of Cook County, and thereupon the state, county, city and all other kinds of taxes levied for the
9 year 1900 for and against property situated in the said Town of North Chicago were duly extended against such assessed value of one hundred thousand dollars ($100,000.00), and said taxes were also extended against said assessments hereinbefore mentioned made upon the tangible property of your orator for the said year 1900, and a warrant was duly issued to defendant Julius Salomon, as the Town Collector of the Town of North Chicago, directing him to collect from your orator all taxes so extended in said tax books upon and against the said assessments so made upon the capital stock and tangible property of your orator for the year 1900 as hereinbefore stated; that thereafter, and on or about the 28th day of January, A. D. 1901, your orator paid to defendant Julius Salomon, as collector of the Town of North Chicago, the sum of eight thousand, eight hundred and seventeen dollars ($8,817.00), in full satisfaction of the taxes so extended upon and against the said assessment made by the State Board of Equalization upon the capital stock of your orator for the year 1900, as hereinbefore stated, and that no part of the money so paid by your orator in satisfaction of said taxes has ever been returned or tendered back to your orator, but,

on the contrary, as your orator is informed and believes, said money has been paid over by said Julius Salomon, as such Town Collector, less his commission for collection, either directly or through the County Treasurer of Cook County, to the various taxing and public bodies entitled to receive the same, and has been used, or is still retained by said bodies, respectively.

Seventh. That while said State Board was in session as aforesaid, and before any final action had been taken by said State Board to determine and fix the proper assessment to be made upon the capital stock, including the franchise, of your orator, for the purpose of taxation for the year 1900, a petition for mandamus was filed in the Circuit Court of Sangamon County, Illinois, on or about the 10th day of November, 1900, by the People of the State of Illinois at
10 the relation of one Catherine Goggin, a resident of Cook County, and Robert C. Steele, a resident of Sangamon County, Illinois, against the individual members of the State Board, in which petition it was charged, among other things, that said State Board fraudulently intended to adjourn its session without making any assessment upon the capital stock, including the franchise, of your orator, and of twenty-two other corporations doing business in said City of Chicago, and intended illegally to neglect and refuse to discharge the statutory duty obligatory upon it in that regard; and said petition prayed that a writ of mandamus issue against the members of said State Board, commanding them to make an assessment for the year 1900 on the capital stock, including the franchise, of your orator, and of the other corporations therein mentioned. Neither your orator nor any of the said other corporations were made parties defendant to said petition, nor ever became parties thereto. An answer to said petition was filed by the said defendants therein on or about the 24th day of November, 1900, in which said defendants denied that they had refused or intended to refuse to discharge their duty as members of said State Board. Thereafter as above set forth, said State Board assessed the capital stock, including the franchise of your orator. And afterwards, to-wit: on the 3rd day of December, 1900, said board adjourned *sine die*. On or about the 16th day of December, 1900, said mandamus proceeding was continued at the request of the petitioner therein, and no action whatever appears from the record of said case to have been thereafter taken in said case by either party, until about the 12th day of March, 1901. In the meantime, as aforesaid, your orator had paid the taxes extended upon its assessment upon
11 the capital stock so made by the State Board of Equalization for the year 1900, in the belief that said assessment and the taxes levied thereon were lawful and final, and in compliance with the requirements of the warrant issued to the Town Collector of the said Town of North Chicago, requiring him to collect said taxes from your orator. After said payment, said mandamus case was tried on or about the first day of May, 1901. A final judgment was rendered by the said Circuit Court of Sangamon County in said cause, directing a writ of mandamus to issue against the members of said State Board of Equalization, requiring the said State Board, and the mem-

bers thereof, to convene forthwith at the capital building in the County of Sangamon, and that they forthwith value and assess the capital stock, including the franchises, of each of the corporations mentioned in the petition filed in said cause, including your orator, as of April 1, 1900, "so as to ascertain and determine, respectively, as to each of said corporations, the fair cash value of its capital stock, including its franchises, over and above the assessed value of the tangible property of such company for the year 1900."

Eighth. That from the judgment so rendered, an appeal was prayed by the defendants in said suit to the Supreme Court of Illinois. No evidence was introduced in said cause in said Circuit Court of Sangamon County by the defendants therein, in support of the merits of the assessment theretofore made on the capital stock including the franchise, of your orator, for the year 1900, and no argument was made, either in said Circuit Court of Sangamon County or in said Supreme Court upon said appeal in support of the merits of the said assessment theretofore made upon the capital stock of your orator for the year 1900, the defense made to said petition for mandamus being rested by the defendants therein almost
12 wholly on objections to jurisdiction and other legal grounds touching the power of the court to grant the relief prayed for.

On or about the 24th day of October, 1901, the Supreme Court of Illinois affirmed the judgment of said Circuit Court of Sangamon County hereinbefore mentioned, and on or about the 2nd day of November, 1901, a writ of mandamus was issued out of said Circuit Court of Sangamon County in said mandamus proceeding, and said writ was thereafter served upon said members of the State Board of Equalization. Said writ ordered a new capital stock assessment against twenty of the corporations mentioned in said writ, including your orator, and the material portion of said writ was in the words and figures following, to-wit:

"Now, therefore, that justice may at once be done, you, the said State Board of Equalization and the members thereof, and each of you are hereby commanded to convene at the capitol building in Sangamon County and State of Illinois, and there forthwith to value and assess the capital stock including the franchises, of each of said corporations and companies herein named, to-wit: Chicago City Railway Company, West Chicago Street Railroad Company, North Chicago Street Railroad Company, Chicago Union Traction Company, People's Gas Light and Coke Company, Chicago Telephone Company, Chicago Edison Company, Chicago Consolidated Traction Company, Chicago Electric Transit Company, Chicago and Jefferson Urban Transit Company, Cicero and Proviso Street Railway Company, Evanston Electric Railway Company, North Chicago Electric Railway Company, North Side Electric Street Railway Company, Ogden Street Railway Company, Chicago North Shore Street Railway Company, South Chicago City Railway Company, Chicago Passenger Railway Company, Chicago West Division Railway Company, North Chicago City Railway Company, as of the first day of April, A. D. 1900, in the manner provided by law, so as to ascertain and deter-

mine, respectively, as to each of said corporations, the fair
13 cash value of its capital stock, including the franchise, over and above the assessed value of the tangible property of such corporation for the year 1900. And it is further ordered and commanded that in arriving at said valuations and assessments of the capital stock, including the franchises of the corporations herein named, the said State Board of Equalization and the members thereof and each of them, shall, from the best information obtainable by it and them, ascertain and take into consideration, among other things, as to each such corporation, as the same was on the 1st day of April, 1900, the market value, or if no market value, then the fair cash value of its shares of stock and the total amount of all its indebtedness, except the indebtedness for current expenses, excluding from such expenses the amount paid for the purchase or improvement of property and the assessed or equalized valuation of all tangible property of said corporations, respectively, on said April 1, 1900. And you are further commanded to direct the respective assessments so made to be certified by the Auditor of Public Accounts to the County Clerk of Cook County that the taxes for all purposes thereon may be extended by said Clerk for the year 1900, and you are further commanded to make return to this court on the 22nd day of November, A. D. 1901, in what manner you have complied with this order."

Ninth. That thereafter the regular annual meeting of the State Board of Equalization for the year 1901 was convened at Springfield on the 17th day of September, 1901. By reason of an intervening election, prior to January 1, 1901, the membership of said Board had largely changed. Of the twenty-two members comprising said Board in 1900, only ten remained on said Board in
14 1901, and the remaining twelve members, constituting a majority of said Board, were new members, who had taken no part in the assessment of the capital stock of corporations for 1900. While said Board was in session in 1901, said writ of mandamus under the said judgment of said Circuit Court of Sangamon County, was duly served upon its members.

That on or about the 9th day of November, 1901, said Board of Equalization, by its counsel who had represented it throughout said mandamus suit, appeared in the Circuit Court of Sangamon County, and applied, on behalf of said Board, for an extension of time within which said Board might make its return to said mandamus writ. Said application was denied by said court, and such denial was made in manner and in terms which were understood by many, if not all, of the members of said Board, as being menacing to the members of said Board, and as laying down specific instructions to them without leaving them any substantial discretion respecting the method and basis of making the new assessment commanded, and as requiring them to assess the capital stock and franchise of your orator at its full cash value, and to make its assessment on said basis for the year 1900 without taking into account or consideration the rate of assessment of all taxable property in the State of Illinois as equalized by the State Board of Equalization for the year 1900,

and without attempting to equalize the assessment to be made by said Board in obedience to said writ upon the capital stock and franchise of your orator for the year 1900 with the assessments made upon the other taxable property in the State of Illinois for said year, and without taking into account or making any deduction on account of the said assessment of one hundred thousand dollars ($100,000.00) made in the year 1900 by the State Board of Equalization upon the capital stock and franchise of your orator. Among other things, the judge, holding said Circuit Court of Sangamon County, in denying said application, made the following observations:

"The contention is made that the mode of procedure is new to the Board, and that it requires more time. There is no reason the court sees why they should have proceeded otherwise than as commanded in the writ. The law is the same to-night as it was a year ago or two years ago, as far as taxation is concerned in the State of Illinois. There has just simply been a declaration by the highest tribunal of this State that property must be assessed according to the manner prescribed by law and the statute at its fair cash value. It is said further that the amount of work that they have had to do prevented them from devoting sufficient time to this. As the court views this case, no great amount of time is necessary for that Board to perform their duty. This court decided that what is ordered in the writ be done, and the Supreme Court affirmed that decision. The decision is explicit. There is no reason why any member of that Board should fail to understand exactly what his duty is. All this talk about complications, as to whether they should proceed on that line or this line, or consider this thing or that thing, this amount of per cent. or that amount of per cent. of valuations, is just so much matter to quibble about. This assessment could have been made before the application for the remanding order. It could have been made in a very short time after the writ issued. This is one of the things that they should do. This is one of the orders they should obey, because the time is fixed. They may put off to some other time the assessment of other classes of property, the general assessment for this year, but the assessment of the particular property mentioned in that writ is fixed for a particular date. That is the task they should have addressed themselves to early in the session, if they wanted to comply with the order of the court and obey the law, and that work they must complete at the time fixed."

Tenth. That on November 13th, 1901, notice was served upon George F. McKnight and others, members of the State Board of Equalization, to the effect that on November 21, 1901, your orator would move the Circuit Court of the United States in and for the Southern District of Illinois to grant an interlocutory injunction, restraining the said State Board from making, recording or certifying any assessment for the year 1900 upon the capital stock, including the franchise, of your orator, or of any of your orator's constituent corporations; that on November 21, 1901, the members of said State Board appeared in said court and resisted said motion, and

then and there obtained actual knowledge of all the averments and charges set up in the bill for said injunction.

Eleventh. That on November 22, 1901, said court denied your orator's motion for an interlocutory injunction; and that on said date, within less than an hour after the court had denied said motion, said State Board convened at the capitol building at Springfield, and, under a suspension of their rules, received and adopted a report of the Committee on the Capital Stock of Corporations, and by such vote assumed officially to ascertain, decide and set down an assessment for taxation for the year 1900 upon the capital stock, including the franchise, of your orator and of its eight (8)
17 constituent corporations, respectively.

The said report of the capital stock committee and the accompanying proposed assessment for 1900 on such corporations is as follows:

"SPRINGFIELD, ILLINOIS, *November* 22, 1901.

To the Honorable State Board of Equalization of the State of Illinois.

GENTLEMEN: Your committee on Assessment of Capital Stock of Corporations, other than railroads, to whom was referred on Wednesday, November 6, 1901, a writ of mandamus issued out of the Circuit Court of Sangamon County in the case of the People of the State of Illinois *ex rel* Catherine Goggin and R. C. Steele *v.* State Board of Equalization of the State of Illinois *et al,* commanding this board to make an assessment of capital stock and franchise against the corporations named therein, for the year 1900; afterwards, to-wit: on the 20th day of November, 1901, this board was served with an order issued out of the Circuit Court of the United States, Southern District of Illinois, temporarily restraining and enjoining this board from making an assessment of capital stock and franchise for the year 1900 against the Chicago Consolidated Traction Company, or eight of its predecessor corporations, and the Chicago Union Traction Company, or five of its predecessor corporations, both of Chicago; the orders restraining this board from making an assessment of capital stock and franchise against the corporations named in the bill filed in the United States Circuit Court, Southern District of Illinois, having been dissolved, and the injunction prayed for by said companies having been refused by the said Circuit Court of the United States, Southern District of Illinois, this committee
18 now have the honor to report that it has valued and assessed the capital stock, including the franchise, of each of the corporations and companies hereafter named in schedule "B," as to the values on the first day of April, A. D. 1900, in the manner provided by law, so as to ascertain and determine, respectively, as to each of said corporations the fair cash value of its capital stock, including the franchise, over and above the assessed value of tangible property of such corporations for the year 1900, and that in arriving at such valuations and assessments of capital stock, including the franchise of said corporations, this committee did from the best information obtainable by said State Board of Equalization, and the members thereof, and each of them, ascertain and take into consideration,

among other things, as to each such corporation, as the market value, then the fair cash value of the shares of stock of each such corporation, and the total amount of all of its indebtedness, except indebtedness for current expenses, excluding from such expenses the amount paid for the purchase or improvement of property, and did also ascertain and take into consideration the assessed or equalized valuation of all tangible property of said corporations, respectively, for the year 1900.

And your said committee submits this, its report of said assessment, as contained in said schedule "B," which is made a part of this report, and recommend its adoption.

Respectfully submitted,

SAMUEL M. BARNES, *Chairman;*
JAS. J. McCOMB,
R. CADLE,
F. P. MARTIN,
GEO. F. McKNIGHT,
LOUIS D. HIRSHEIMER,
JOHN S. CRUTTENDEN,
Committee on Assessment of Capital Stock of Corporations."

Chicago Consolidated Traction Company.

SCHEDULE "B."

Showing the valuation and assessment by the State Board of Equalization upon the capital stock, including the franchise of the companies and associations hereinafter named, incorporated under the laws of the State of Illinois, other than railway companies; for the year 1900, being the equalized value of the capital stock, including the franchise, over and above the assessed value as equalized, of the tangible property of such corporations assessed by local assessors.

	Amount of capital stock paid up, as reported by company.	Full value of capital stock, including franchise, as fixed by State Board of Equalization.	Assessed value of capital stock, including franchise, as fixed by State Board of Equalization.	Equalized value of tangible property, assessed by local assessors, deducted under requirements of section 3, Revenue Law.	Net assessment of capital stock, including franchise, being excess of equalized value of capital stock and debt over tangible property assessed by local assessors.
West Chicago Street Railroad Company	$13,189,000	$24,071,100	$4,814,220	.....	$4,814,220
North Chicago Street Railroad Company	7,920,000	18,208,000	3,641,600	.....	3,641,600
Chicago Union Traction Company	32,000,000	10,600,000	2,120,000	$2,090,630	29,370
Chicago Consolidated Traction Company	15,000,000	12,000,000	2,400,000	277,813	2,122,187
Chicago Electric Transit Company	1,500,000	1,172,000	234,400	.....	234,400
Chicago & Jefferson Urban Transit Company	2,000,000	308,000	61,600	.....	61,600
Cicero & Proviso Street Railway Co	2,500,000	2,111,000	422,200	.....	422,200
Evanston Electric Railway Company	1,000,000	180,000	36,000	.....	36,000
North Chicago Electric Railway Company	2,000,000	968,000	193,600	.....	193,600
North Side Electric Street Railway Co	1,500,000	230,000	46,000	.....	46,000
Ogden Street Railway Company	2,000,000	850,000	170,000	.....	170,000
Chicago North Shore Street Railway Co	650,000	1,227,500	245,500	.....	245,500
Chicago Passenger Railway Company	1,340,000	1,740,000	348,000	.....	348,000
Chicago West Division Railway Company	1,250,000	10,602,500	2,120,500	.....	2,120,500
North Chicago City Railway Company	500,000	5,100,000	1,020,000	.....	1,020,000
Totals	$84,349,000	$89,368,100	$17,873,620	$2,368,443	$15,505,177

20 The assessment thus adopted fixed the aggregate full value of the capital stocks, including the franchises of your orator and its eight constituent corporations, at $19,045,500.00 and the total full value of the tangible property of your orator at $1,389,065.00, no tangible property value being deducted on account of any one of the eight constituent corporations.

Twelfth. That said excessive and confiscatory assessment of taxation for the year 1900, was made without notice to or appearance by either your orator or any of its eight constituent companies, but was made wholly *ex parte*, so far as they and each of them, were concerned, and, as your orator is informed, believes and charges, was formulated, arranged, reported and adopted in the following manner, to-wit:

The said State Board has a standing committee of seven of its members, called "The Committee on Assessment of Capital Stock of Corporations." The members composing the Committee at the time of the submission of said report, were those whose names are signed thereto. Your orator further charges, on information and belief, that the said report and the assessment of the capital stock of your orator and of its eight constituent corporations, was prepared by the said committee in executive session before the said ruling of the court on the motion for an injunction, and that neither the said State Board, as a body, nor the majority of the members thereof, had any participation in or knowledge of the amounts fixed by the said assessment or the basis or method on which they were prepared before the adoption of said report by said State Board; that said assessment of November 22nd, 1901, was, in fact, prepared under the direction of said committee and adopted by said State Board as a mere ministerial act, done strictly in obedience to the aforesaid peremptory writ of mandamus and it substantially adopted

21 many of the figures and estimated values which were claimed by the relators in such mandamus case, with some slight deductions from such figures which were merely arbitrary, and not based on any principle, rule or independent valuation.

The estimated capital stock valuations of said relators thus bodily adopted by the committee discarded all other methods or tests of value and were simply the added assumed market values of the stock and bonds of each of the corporations, which aggregate sum it was assumed constituted in law and fact the fair cash value for taxable purposes of the capital stock, including the franchise, of each of said corporations.

In framing such capital stock assessment on full cash market values the said committee failed, neglected and refused to take into account the fact, of which they were then fully cognizant, that general property in the state, as well as that in Cook County, was not assessed for taxation exceeding one-fifth of seventy per cent. of its fair cash values, and at a much less rate on the property of steam railroads.

When the said committee, about 12:30 P. M. on November 22nd, 1901, presented its report to the full board, the secretary read aloud the report and the tabulated capital stock assessment which ac-

companied it. Thereupon the rules were suspended, and without any explanation of such assessment, or the principles or proofs on which it was computed, or any personal examination by the board in session or by a majority of its members, the said report and assessment were hurriedly adopted by vote, and in a few moments such assessment was certified to the Auditor of Public Accounts and by him certified down to the County Clerk of Cook County, so that the official assessment was reported, adopted, certified and mailed within less than an hour after the court had overruled the said motion for a temporary injunction.

22 *Thirteenth.* That said second assessment for the year 1900 of your orator's capital stock, including the franchise, was certified by said State Board to the Auditor of Public Accounts of Illinois, and was certified by said auditor to the County Clerk of Cook County, and thereupon said County Clerk, in connection with his extension of taxes generally for the year 1901, made an extension of taxes against such capital stock assessment as deemed by him to be required by law, and delivered to defendant Julius Salomon, Town Collector of the Town of North Chicago (where any capital stock tax against your orator is properly payable) the tax book or books with the warrant or warrants annexed thereto as required by law, authorizing and requiring said Salomon, as such Collector, to enforce the collection, according to law, of all the taxes so extended against such new and second capital stock assessment for the year 1900. That the said taxes for the year 1900 in the Town of North Chicago were extended at the rate of 8.817 per cent., making a total tax on your orator's said new capital stock assessment of $345,034.97; that it is the duty of said Salomon, as the Town Collector of taxes, to collect all unpaid taxes on property in his town; and that said defendant, Julius Solomon as such Town Collector, and said defendant, Samuel B. Raymond, as such County Collector, threaten to enforce the collection of said taxes against your orator, together with a penalty on the same by reason of delay in the payment of said taxes, such penalty being intended to be imposed upon your orator under the supposed authority of section 276 of the Illinois General Revenue Act of 1872, and to that end to levy the same by distress and sale of the goods and chattels of your orator, which proceedings by distress and sale cannot be prevented or defended against by your orator otherwise than by a bill in chancery. That your orator's personal property consists chiefly of its cars, and other personal property actually used in its business of transporting passengers upon the

23 streets in the County of Cook, and that a levy of said tax by distress upon any part of your orator's personal property would interfere with and interrupt the operation of your orator's street-car system, and would greatly embarrass not only your orator in the carrying on of its said business in operating its street cars, but would embarrass and injure the public who use your orator's cars, in going to and from their business in the said City of Chicago, and that the property so levied upon and sold could not be recovered by your orator in an action of replevin or by any

other legal proceeding. That after collecting said taxes, the Town or County Collector is required by law to pay over and distribute such taxes in the proportions designated in the tax book or books to the City Treasurer of the City of Chicago, the County Treasurer of Cook County, the Treasurer of the Sanitary District, and the other officers and authorities entitled to receive the same. That if your orator should pay said taxes to said Town or County Collector, your orator, in order to recover back the same would be obliged to bring a separate suit against each one of the several taxing bodies receiving its proportionate share of said taxes thereby necessitating a multiplicity of suits, from which this court as a court of equity should relieve it; and that the portion of said taxes which would go to the State of Illinois could not be collected back by your orator by any legal proceeding whatsoever, and that if repayment could be compelled from said City of Chicago and other taxing bodies, such repayment would not cover the costs, including commissions deducted for the collection of said taxes. By reason of which matters the collection of said taxes so extended upon said capital stock assessment would inflict upon your orator great and irreparable injury, for which your orator has not a complete or adequate remedy at law.

24 *Fourteenth.* Your orator charges that the said capital stock assessment was not adopted by the said State Board or a majority of its members in the exercise of their own independent judgment and discretion, but because they believed they were coerced to make such assessment by the peremptory writ of mandate, which not only required them to make an assessment, but, according to the opinion of the court ordering the writ, had specifically and precisely instructed them what assessment should be made and had thereby subordinated the judgment and discretion of the board to the judicial command.

The said board then and there well knew that a very large number of the remaining 334 corporations, whose capital stocks were assessed for taxation at its September session in 1900 and a large number of the 112 railroad companies whose tangible property was, but whose capital stocks were not, assessed in 1900, and a large number of other state corporations having stocks and debts aggregating more than a thousand million of dollars, upon which interest and dividends had been regularly paid for years, were each and all subject to be assessed to the aggregate full value of over $150,000,000 upon their respective capital stocks, including their franchises for the year 1900, upon the same method, rules and principles which the board under the coercion of said writ of mandate, applied in making the before-mentioned assessment against your orator and its eight constituent corporations.

But the said board, unmindful of its duty, and coerced by the said writ of mandamus, failed and neglected to make any capital stock assessment against any of such beforementioned corporations, but in violation of the Constitution of the United States, unlawfully and fraudulently selected your orator and its constituent corporations, all resident in Cook County, and by the application of rules

and principles of valuation from which it exempted other
25 corporations, it levied a discriminating and crushing tax burden on a selected few property owners, contrary to the Constitution of the United States and in violation of the Constitution of the State of Illinois.

Fifteenth. That under the provisions of the Revenue Act of the State of Illinois, by virtue of which said State Board of Equalization assesses the capital stock of corporations, said State Board is required to adopt such rules and principles for ascertaining the fair cash value of such capital stock as to it may seem equitable and just, which rules and principles, when so adopted, if not inconsistent with said Act, are as binding, and of the same effect as if contained in said Act; that on November 22nd, 1900, said State Board adopted certain rules for ascertaining the fair cash value of the capital stock of corporations, which rules were condemned by the Supreme Court of Illinois in its decision in said mandamus case, as being in conflict with the Revenue statute of the State of Illinois, and were held by said Supreme Court to be illegal and inoperative; that said State Board did not adopt any other rules or principles for assessing the capital stock of corporations, until after it had made and certified said second assessment upon the capital stock and franchise of your orator for the year 1900; and that said assessment was made by said State Board without the use of any rules as required by said statute.

Sixteenth. That by section one of article twelve of the Constitution of the State of Illinois, it is provided:

"The General Assembly shall provide such revenue as may be needful by levying a tax by valuation, so that every person and corporation shall pay a tax in proportion to the value of his, her or its property, such value to be ascertained by some person or persons to be elected or appointed in such manner as the General Assembly shall direct, and not otherwise."

26 That the foregoing constitutional provision requires that all property assessed for taxation in the State of Illinois, in any year, should be assessed upon the same basis or percentage of its actual value, and that said provision is applicable to the assessment of the capital stock and franchises of corporations under the General Revenue Law of the State of Illinois, so that by virtue of said constitutional provision, taken in connection with the Revenue statute of the State of Illinois, it is the duty of the State Board of Equalization to assess all property, including the capital stock of corporations, which it is by law authorized to assess, at the same rate or percentage of its actual value at which it shall find and determine that all other taxable property in the State of Illinois is assessed and taxed for the same year; that said State Board of Equalization is not given any power by the statute in equalizing the assessments made by the local assessing bodies to raise the aggregate of such assessments in the State of Illinois more than one per cent., its function and duty being practically limited to the equalization of assessments, leaving the aggregate of the assessments made by the local assessing bodies at the same amount

as originally fixed, so that the basis of the assessment of property in the State of Illinois is fixed in each year by the local assessing authorities, the function and duties of the State Board of Equalization being to equalize the said local assessments, and to make its original assessments of all property assessed by it in each year upon the same basis or percentage of actual value as all other property is assessed for such year in the State of Illinois, after such assessments are equalized by said State Board.

Your orator further states that the assessed value of all the taxable property in the State of Illinois for the year 1899, was $953,099,468.00, and that the aggregate equalized assessed value of all property in Cook County, in the State of Illinois, for
27 the year 1899, was $381,548,581.00; that the aggregate equalized assessed value of all the taxable property in the State of Illinois for the year 1900 was $809,733,405.00; that the aggregate of the equalized assessed value of all property in the County of Cook for the year 1900 was $306,957,900.00; that the aggregate equalized assessed value of all the taxable property in the State of Illinois for the year 1901 was $991,231,829.00; that the aggregate of the equalized assessed value of all taxable property in the County of Cook for the year 1901 was $408,189,960.00; that the aggregate assessment of all the taxable property in Cook County, as made by the local assessors for the year 1899, was $378,828,291.00; that the aggregate of the assessed value of all the taxable property in Cook County, as assessed by the local assessing bodies for the year 1900 was $260,564,522.00, being a reduction or decrease in the assessment made by the local assessing bodies in Cook County of over $118,000,000.00, or more than thirty-one per cent.; that the total assessed value by the local assessing authorities of all the taxable property assessed by them in Cook County for the year 1901 was $365,191,329.00.

Your orator further states that the net assessments made by the said State Board of Equalization for the year 1900, under the writ hereinbefore mentioned, upon the capital stock and franchise of the several corporations mentioned in said writ, were as follows:

Chicago City Railway Company	$5,001,300
People's Gas Light & Coke Co.	9,217,067
Chicago Telephone Company	775,266
Chicago Edison Company	1,800,761
South Chicago City Railway Company	433,886
Chicago Union Traction Company (and lessor companies)	11,973,690
Chicago Consolidated Traction Company (and constituent companies)	3,531,487
Total	$32,733,457

28 Your orator further states that after making said assessments, said State Board adopted rules for assessment of the

capital stocks, including the franchises, of corporations created under the laws of the State of Illinois, which rules required said State Board after making such assessments to equalize the amounts so extended so that such companies should be assessed, as nearly as practicable, upon a uniform basis with other property throughout the state; that such rules were adopted by said State Board December 10th, 1901; and that, at the same session of said State Board at which it made said formal assessment for the year 1900, but after the adoption of said rule, the said State Board of Equalization made capital stock assessments for the year 1901 against said corporations as follows:

Chicago City Railway Company	$2,541,309
People's Gas Light & Coke Co.	5,782,997
Chicago Telephone Co.	574,974
Chicago Edison Co.	737,789
South Chicago City Railway Company	120,000
Chicago Consolidated Traction Company (and constituent companies)	1,732,503
Chicago Union Traction Company (and lessor companies)	5,053,588
Total	$16,543,245

Your orator further states that the asesssments made by the State Board of Equalization in the year 1899, upon the capital stock and franchises of corporations, did not materially differ or vary from the amount of the assessments made by said State Board upon the capital stock and franchises of the corporations in the year 1900, and that the variations above shown in the aggregate of the assessed valuations of the property in the State of Illinois, and in the County of Cook for the years 1899 and 1900, did not to any material extent arise or grow out of any differences in the amounts of the assessments made by the State Board upon the capital stock and franchises of corporations.

29 Your orator further shows and states that the equalized assessed valuation of all the taxable property in the State of Illinois for the year 1899 did not equal one-fifth of the actual value of the property so assessed; that said assessment for the year 1899 was made by the local assessing bodies in view of the provision then contained in an amendment to the Revenue Act, limiting the aggregate rate of taxation, with certain exceptions, to five per cent. of the equalized assessed value of the taxable property, which provision of the statute so limiting the rate of taxation was adjudged and decided by the Supreme Court of Illinois to be unconstitutional and void, and that after said decision and in consideration thereof, the local assessing bodies, for the purpose of limiting the rate of taxation under the other limitations contained in the statute, reduced the assessed valuation made by them in the year 1900 of the taxable property for the year 1900, and that the Board of Review of the said County of Cook to that end, and for that reason in the year 1900, made the reduction in the assessed value of the taxable property in

Cook County hereinbefore mentioned, of the sum of $118,000,000. And your orator avers and charges the fact to be that the average equalized assessed value of taxable property in the State of Illinois for the year 1900 did not exceed one-fifth of seventy per cent. of the cash value thereof, either in fact or in the opinion and judgment of the members of the said State Board of Equalization, and of the said Board, and that if said Board of Equalization had considered itself at liberty under the writ hereinbefore mentioned, to equalize its assessment upon your orator's capital stock with the equalized assessed valuation of all other property assessed for taxation in the State of Illinois for the year 1900, it would have resulted in a very large reduction of the assessment of your orator's capital stock for the year 1900. But your orator is informed and believes, and so states the fact to be, that said Board, in making said new
30 assessment for the year 1900, and in failing to equalize the same with the assessment made upon all other property in the State of Illinois for the year 1900, considered itself to be coerced by the writ issued by said Circuit Court of Sangamon County, and to be acting under specific instructions from said court, and to be debarred from all exercise or independent judgment and discretion in regard to the valuation to be placed upon your orator's capital stock and franchise for the year 1900, and for that reason only failed to reduce the amount of its said assessments so as to correspond with the assessments upon other property in the State for said year. Your orator is informed and believes, and therefore states the fact to be that the excess of the capital stock assessments against the corporations named in said writ over and above the net capital stock assessments against the same corporations for the year 1901 arose largely, if not wholly, out of the failure of said Board to equalize the said capital stock assessment for 1900 with the assessments made for the same year of all other taxable property in the State of Illinois.

Seventeenth. Your orator further states that the said State Board of Equalization on November 22nd, 1901, when it made said second assessment of your orator's property for the year 1900, then and there well knew that your orator was, on April 1st, 1900, the owner and in the exclusive use of all the railroads, property, assets, ordinance rights and franchises of each and every of its eight constituent corporations, and that none of such constituent corporations on April 1, 1900, owned or operated any railroad or possessed or exercised any franchises; that said State Board also then and there well knew that your orator did not on April 1, 1900, own any railroad, or ordinance rights or hold or exercise any franchises, except the identical properties, rights and franchises which had formerly been owned by some one of its constituent corporations.

31 But said state board, in spite of such knowledge and acting under the coercion of said mandate, on November 22nd, 1901, ascertained and fixed the full value of the capital stock of your orator, being the aggregate tangible property and franchises formerly the separate property of some of its constituent corporations, at $12.000,000.00, and then assessed $7,046,500.00 as the full value of the aggregate capital stocks of its eight constituent corporations, so

that the railroad property and franchises of your orator are thereby subjected to double taxation on the assessed value of one-fifth of $19,046,500.00, which is illegal, fraudulent and unconstitutional, and denies to your orator the equal protection of the laws.

Eighteenth. Your orator further alleges that it was incorporated as a consolidation of seven former corporations, namely,

Chicago Electric Transit Company,
Chicago & Jefferson Urban Transit Company,
Cicero & Proviso Street Railway Company,
Evanston Electric Railway Company,
North Chicago Electric Railway Company,
North Side Electric Street Railway Company, and
Ogden Street Railway Company, and that it also acquired by lease all the property of the Chicago North Shore Street Railway Company; that said eight corporations are your orator's constituent corporations heretofore mentioned in this bill; that on April 1st, 1900 your orator owned and still does own all the property, rights and franchises of all of said eight constituent corporations; that your orator's shares of stock were issued wholly on the ownership by it of said property, rights and franchises, your orator having never had any other property; that your orator's ownership of said property rights and franchises formerly belonging to said eight constituent corporations, was necessarily taken into account in the assessment of its capital stock made in December 1900 for the year 1901, yet
32 the said State Board, in its pretended assessment of November 22nd, 1901, illegally and fraudulently included the said property, rights and franchises in your orator's assessment and also in the assessment of said constituent corporations for 1900, and thereby intentionally subjected your orator to an unequal and unconstitutional double taxation.

Nineteenth. Your orator further alleges that said State Board, in making its assessment for 1900, was guilty of gross discrimination between different classes of property and did not assess the property of steam railroads at the same rate or in the same manner as it did the property of your orator, but that on the contrary, said Board in 1900 fixed the assessed value of the following seven (7) railroads, upon their main railroad sidings, buildings on right of way and proportion of rolling stock in Cook County at the following sums:

	Assessed value.
Chicago, Burlington & Quincy	$499,340
Chicago & Eastern Illinois	182,352
Chicago, Milwaukee & St. Paul	824,849
Chicago & Alton	398,024
Chicago & Northwestern	1,270,343
Chicago, Rock Island & Pacific	819,223
Lake Shore & Michigan Southern	558,106
Making a total assessed value of	$4,552,237

Your orator was assessed in 1900 and paid tax upon tangible property whose net value was fixed at $277,813.00 and is now subjected to a capital stock assessment of $3,531,487.00, thus making an aggregate tax assessment upon its property, of $3,809,300.00, while none of the above seven steam railroad corporations, or any
33 other railroad companies of the state, were assessed upon their capital stocks.

Twentieth. Your orator further alleges that the gross income of its system of roads during the year 1900 was only $1,041,963.69, which sum was not sufficient to pay its operating expenses, taxes, rentals and interest on bonds.

Twenty-first. Your orator charges that said second capital stock assessment for 1900 against your orator's property, is illegal, excessive, unequal, unjust, wrongful and void, and is in violation of the Constitution of the United States, as well as in violation of the Constitution of the State of Illinois, for the following reasons, among others:

(1.) Said second assessment for 1900 was made after the said Board of Equalization had exhausted its power of making any such assessment by making the first assessment for that year, which first assessment has never been vacated or set aside in any judicial or other proceeding to which your orator was a party, or by which your orator is in any way bound, so that the attempt now being made, as hereinbefore set forth, to collect taxes extended upon said second assessment, constitutes an attempt to take your orator's property without due process of law, in violation of the Constitution of the State of Illinois, and also in violation of the Fourteenth amendment to the Constitution of the United States.

(2.) Said second assessment was made after said State Board had adjourned for the year 1900, and after the membership of said board had been largely changed by reason of expiration of term of office and the election of other members, so that the State Board which made said second assessment was not the board which was vested by law with jurisdiction to make assessments for the year 1900,
34 whereby said second assessment was made without authority of law, and is void, so that the collection of taxes extended upon it would be a taking of your orator's property without due process of law.

(3.) Said second assessment was made after your orator had paid all taxes legally levied upon its capital stock for the year 1900, so that said second assessment was made when there were no taxes to be levied on your orator's property, and when there was no power in any officer or body of officers, under the Illinois law, to make any assessment against your orator's capital stock for the year 1900, and the collection of taxes extended upon such second assessment would accordingly be a taking of your orator's property without due process of law.

(4.) Said second assessment was not make by said State Board voluntarily and judicially, but under the coercion of said writ of mandamus issued by the Circuit Court of Sangamon County, whereby your orator and the other corporations mentioned herein, were subjected to an additional, oppressive, discriminating and unjust capital

stock assessment, and whereby it is sought to subject them to more than their proportionate share of taxation and by such unequal and illegal assessment and taxation, your orator is denied the equal protection of the laws, as guaranteed to it by said Fourteenth amendment.

(5.) Said second assessment was made upon an entirely different basis from that under which all other corporations assessed by said board, except those mentioned herein, were assessed for the year 1900, whereby your orator has been deprived of the equal protection of the laws, in violation of said Fourteenth Amendment to the Constitution of the United States, and your orator is also subjected to excessive and disproportionate taxation, contrary to the Constitution of the State of Illinois.

35 *Twenty-second.* Your orator also charges that said second assessment of capital stock taxes against your orator's property for the year 1900, even though not absolutely void for the reasons hereinbefore set forth, is nevertheless grossly excessive, and that the taxes extended against it should, therefore be reduced for the following reasons:

(1.) The amount paid by your orator as taxes upon its original capital stock assessment for 1900, as hereinbefore set forth, should have been deducted by said County Clerk from the amount of the taxes extended upon said new capital stock assessment for said year 1900.

(2.) Said capital stock assessment was not equalized by said State Board of Equalization so as to make it uniform with the equalized assessment made against all taxable property in the state of Illinois for the year 1900.

(3.) The said second assessment for 1900 is an excessive, disproportionate and discriminating assessment, intentionally and fraudulently laid upon your orator and the other corporations named herein, which were arbitrarily selected out of the great body of property owners, so that they will be subjected to much more than their proportionate tax burden, and thereby denied the equal protection of the laws.

Forasmuch, therefore, as your orator is without remedy in the premises, save in a Court of Equity, where matters of this sort are properly cognizable and relievable, your orator prays that the defendants, and each of them, may be required to answer this bill according to the usual practice in chancery but not under oath, answers under oath being hereby expressly waived; that the said defendants may be summoned to appear; that this honorable court will declare and decree that the second assessment of your orator's capital stock for 1900 and the taxes extended thereon are illegal, fraudulent

36 and in violation of the Constitution of the United States and of the State of Illinois; that the court will perpetually enjoin the defendants and their successors in office from collecting said taxes, or any part thereof; that if a part only of said taxes shall be found by this court to be illegal and void, the relief prayed against the whole of said taxes may be granted as to so much thereof as shall be found by this court to be illegal (and in such case, your orator is ready and

willing, and hereby offers to pay so much of said taxes as may be held by this court to be illegal); that the said defendants be temporarily restrained from attempting to collect said taxes, or any part thereof, until the further order of this court; and that your orator may have such other, further or different relief as to justice and equity may appertain and as may be necessary fully to protect your orator's rights.

May it please your Honors to grant the writ of subpœna commanding the marshal to summon the defendants, Julius Salomon and Samuel B. Raymond, to appear and answer this bill, according to the usual practice of this court, and may it further please your Honors to grant a writ of injunction restraining (until the further order of this court) the defendants above named from attempting to collect said taxes or any part thereof.

CHICAGO CONSOLIDATED TRACTION COMPANY,
By J. M. ROACH, *President.*

——— ———,
Counsel for Complainant.

37 STATE OF ILLINOIS, *County of Cook, ss:*

F. E. Smith, being duly sworn, deposes and says that he is the Auditor of the Chicago Consolidated Traction Company, complainant in the above entitled cause; that he has read or heard read the foregoing bill of complaint, and knows the contents thereof, and that the matters and things therein set forth are true, except such matters and things as are therein stated to be alleged upon information and belief, and that as to such matters, he believes them to be true.

F. E. SMITH.

Subscribed and sworn to before me, this 15th day of January, A. D. 1903.

[SEAL.] ARTHUR DYRENFORTH,
Notary Public.

(Endorsed:) Filed Jan. 15, 1903. Marshall E. Sampsell, Clerk.

38 And on to-wit: the fifteenth day of January, 1903, come the defendants in said entitled cause by their solicitors and filed in the clerk's office of said Court their certain Answer in words and figures following to-wit:

39 *Answer.*

In the United States Circuit Court, Northern District of Illinois, Northern Division.

CHICAGO CONSOLIDATED TRACTION COMPANY, Complainant,
vs.
SAMUEL B. RAYMOND, County Treasurer and *ex-Officio* County Collector, and JULIUS SALOMON, Town Collector of the Town of North Chicago, Defendants.

The joint and several answer of Samuel B. Raymond, county treasurer and *ex-officio* county collector of Cook county, and Julius Salomon, town collector of the town of North Chicago, county of Cook and State of Illinois, defendants in the above-entitled cause, by Edwin W. Sims, county attorney; Frank L. Shepard, assistant county attorney, and William F. Struckmann, assistant county attorney, their solicitors, to the bill of complaint of the Chicago Consolidated Traction Company, complainant.

These defendants, now and at all times hereafter, saving and reserving unto themselves, all benefits and advantage of exception which can or may be had or taken to the many errors, uncertainties and other imperfections in the said bill contained, for answer thereunto, or to so much, and such parts thereof, as these defendants are advised it is or are material or necessary for them to make answer unto, answering, say:

40 2. These defendants admit that complainant is a corporation organized and existing under the laws of the State of Illinois, as alleged; that Samuel B. Raymond is the county treasurer and *ex-officio* county Collector of Cook County; that the defendant Julius Salomon is the Town Collector of the Town of North Chicago.

3. These defendants further answering admit all the allegations contained in the 2nd and 3rd paragraphs of complainant's bill.

These defendants further answering deny that complainant purchased from each or any of the eight corporations named in the 2d paragraph of complainant's bill all of their respective properties, franchises and rights, or that any of the said corporations conveyed or delivered to complainant all of its property, franchises and rights, as alleged in the 3rd paragraph of complainant's bill; and deny that neither of the said eight corporations have owned or conducted any business or exercised any franchise or powers, or had any officers or employés, or that all or any of the said eight corporations ceased to possess any property or franchises and became dissolved or extinct, as alleged.

These defendants further answering say and allege the fact to be that on the 1st day of April, 1900, the amount of paid up capital stock of the complainant was $15,000,000., and that the said complainant had outstanding a bonded indebtedness of $5,020,000., and that under the terms of a lease with the Chicago North Shore Street

Railway Company, it was obligated to pay an annual rental for such properties as were leased to the complainant by said North Chicago North Shore Street Railway Company of $79,500.

41 4. These defendants further answering deny that the said complainant, or anyone for it, within the time and in the manner required by law, listed for taxation in 1900 all its property subject to taxation for said year, as alleged; either for itself or for either of the eight predecessor corporations; but these defendants state and allege the fact to be that complainant failed and refused to file the schedule required by law for that purpose for the purpose of evading a just, proper and legal assessment of its property for purposes of taxation for said year, and state and allege the fact to be that each of said eight other corporations failed and refused to file any list or schedule or statement of their respective property with the Board of Assessors or with any officer, as required by law, and so failed and refused to discharge their duty in this regard for the purpose of evading and defeating a proper, equitable and valid assessment for purposes of taxation of their respective property for said year. And these defendants further answering admit that the Board of Assessors and the Board of Review of Cook County made assessments of the tangible personal property and of the real estate of the complainant for the year 1900 in the amounts and in the manner, as alleged in the 4th paragraph of complainant's bill of complaint.

5th. And these defendants further answering say and allege the fact to be that on the 1st day of April, 1900, complainant had outstanding its bonds amounting to the face value of $5,020,000., the fair cash value of which on the 1st day of April, 1900 was $7,500,000.; and that in addition to the value of said bonds, the fair cash value of the capital stock and franchise of the complain-

42 ant on April 1, 1900 was $15,000,000.

6. These defendants further answering state and allege the fact to be that the State Board of Equalization in 1900 made an alleged finding of the full value of complainant's capital stock and franchise at the sum of $1,889,065, and of an alleged assessed value of $377,813, and deducted from said alleged assessed value the assessed value of the complainant's tangible property as returned by the local assessors of $277,813, leaving an alleged net assessment of the capital stock and franchise of the complainant of $100,000., which the said State Board fraudulently in conjunction with complainant set down as the assessed value of complainant's capital stock and franchise over and above the assessment of its tangible property by the local assessors, which said alleged and fraudulent assessment was certified to the County Clerk of Cook County; these defendants admit that the County Clerk thereafter extended the same upon the collector's warrant, together with the taxes based thereon, and delivered the said warrant for its collection to the said collector; that thereafter complainant voluntarily paid the said taxes so extended amounting to $8,817.00; but deny that by the payment so made complainant was fully discharged from payment of all the general taxes of said year 1900; and these defendants further state and allege

the fact to be that notwithstanding the fair cash value of complainant's capital stock and franchise as heretofore alleged, the State Board of Equalization in total disregard of its duty as required by law, wilfully and fraudulently found the full value of complainant's capital stock and franchise as above set forth, and set down the assessment of the same over and above the assessment of its
43 tangible property by the local assessors as above set forth, which said fraudulent and illegal action on the part of the said State Board of Equalization in reference to the valuation and assessment of complainant's property was had by and with the concurrent fraudulent action of complainant itself in its failure to properly list and schedule its property for purposes of taxation and to furnish the statement therefor required by law, and its fraudulent representation to the said State Board; and defendants further allege and state the fact to be that the said alleged assessment was and has been, long prior to the filing of the bill in this suit, held and declared by the Circuit Court of Sangamon County, and by the Supreme Court of the State of Illinois, not to be made in accordance with the laws of the State of Illinois, and to be null and void, and a reassessment of the capital stock of said complainant over and above the assessed value of its tangible property was ordered by the Circuit Court of Sangamon County.

But these defendants deny that in making the same new assessment—which these defendants allege was made in pursuance to said mandate—the members of said Board did not exercise their independent judgment and discretion in arriving at a valuation of the properties ordered to be assessed, but these defendants say and allege the fact to be, that after a full and fair consideration of all the matters and things enjoined in said mandate and after a full and fair consideration of all other matters and things proper to be considered by them under their own rules, which were then and for a great many years had been in force, and after a full consideration of the independent knowledge and information of the
44 members of said Board, the said Board made the said new assessments of property as hereinafter more particularly set forth.

And these defendants further answering deny that under the revenue laws of the State of Illinois, the State Board of Equalization was authorized to adopt such rules and principles to ascertain the fair cash value of the capital stock of the corporations, including franchises, as might seem to them equitable and just, except such rules as shall be in conformity to and consistent with the laws of the State of Illinois. And these defendants further answering deny that at its September session in 1900 it adopted any rules and principles governing the assessment of the capital stock of corporations subject to assessment by it not inconsistent with the laws of the State of Illinois; but these defendants aver that the said Board at its said session did adopt certain pretended rules which have been held to be inconsistent with and repugnant to the laws of the State of Illinois by the Supreme Court of the State of Illinois in direct proceed-

ings against said State Board of Equalization, wherein the validity of said rules was put in issue.

6. And these defendants further answering state and allege the fact to be in the year 1872, the State Board of Equalization did adopt certain rules for the government of said Board in reference to the assessment of the capital stock and franchises of corporations subject to assessment by said Board, and that in 1889 the said Board re-enacted said rules with certain changes, retaining therein, however, the material facts applicable to the assessment of the property of complainant and other corporations. And these defendants aver that the said rules were in all respects consistent with and in conformity to the constitution and laws of the State of Illi-
45 nois and the constitution of the United States and that the said rules were in force at the time of the supposed assessment made against complainant in the year 1900, and were then disregarded by said Board, and that said rules were in full force and effect at the time of making the new assessment against the said capital stock and franchises of the said complainant in said complainant's bill of complaint referred to; and these defendants further answering allege that in making said subsequent assessment said State Board of Equalization in all matters strictly conformed to the said rules in ascertaining the full fair cash value of complainant's capital stock and franchise.

8. These defendants further answering deny that the alleged assessment made in 1900 upon the capital stock and franchise of complainant was higher in proportion than the assessment of other property of the state, or that complainant was discriminated against in favor of other persons and corporations, as alleged in said bill; but state and allege the fact to be that in making said alleged assessment the said State Board of Equalization purposely and intentionally made so gross an undervaluation that the same is and was so low and inequitable as to be in effect and in fact no assessment; that said alleged assessment was not the result of the exercise of the lawful judgment and discretion of said Board, but was intentionally made with the co-operation of complainant and in violation of law and the lawful rules of said Board in that regard, with the intent that said property should be assessed on so low a valuation that it would bear only a small proportion of the general taxes, which otherwise on a just and equitable basis as correspond with other taxable property of the state it would and ought to
46 bear. And these defendants further answering deny that the valuation placed upon the general property of the State of Illinois for the year 1900, consisting of lands, improvements, city and town lots and improvements of personal property was based in fact upon an average valuation not equal to 60 per cent. of the real fair cash value of such property, but state and allege the fact to be that the assessment on said last described property for the year 1900 was by the different assessing tribunals of the State intended to be made, and was in fact made upon a basis of the full fair cash value of the same; and these defendants deny that the property of any of the persons or corporations mentioned in the bill of

complaint was omitted or exempted from assessment for purposes of taxation as alleged in the said bill.

9. And these defendants further answering deny that the said State Board of Equalization had no power or authority to make a finding of full value and an assessment of the capital stock and franchise of complainant over and above the assessed value of its tangible property at its session in 1901 for the year 1900; and deny that the State Board had no power or jurisdiction to make a finding of full value and an assessment of the capital stock and franchise of each of the other said eight corporations at its sessions in 1901 for the year 1900, as alleged; but state and allege the fact to be, that it became and was the duty of the said State Board to make a finding of full value of the capital stock and franchise of complainant and an assessment thereof in excess of the assessed value of its tangible property as made by the local assessors at its session in 1901 for the year 1900, and likewise the duty of the
47 said Board to make a finding of full value of the capital stock and franchise of each of the other said eight corporations, and to assess the same at its session in 1901 for the year 1900; and deny that the action of the said State Board in 1901, and the finding of full value and assessment made upon the capital stock and franchise of complainant for the year 1900 was without notice to complainant, or to all or any of the other said eight corporations, but state and allege the fact to be that the action of the said State Board in 1901 in the matter of the assessment in the bill of complaint complained of was had with the full knowledge of complainant and of each of the other said eight corporations.

10. These defendants further answering deny that the judgment and writ of the Sangamon County Circuit Court are illegal and void on their face, or that they required the said State Board to assess the fair cash value of the capital stock and franchise of complainant and each of the other eight corporations and only deduct therefrom one-fifth of the fair cash value of their tangible property instead of the full value thereof, or that the said judgment and writ subjected complainant or either of the other eight corporations to double or unequal taxation, as alleged; and deny that the judgment and writ required the said State Board to unconstitutionally assess complainant or either of the other eight said corporations, as alleged.

11. And these defendants further answering admit that the State Board of Equalization found the full value of the capital stock and franchise of complainant and each of the other eight said corporations and assessed the same in the amounts as set forth in
48 the copy of Schedule B on page 16 in complainant's bill; but deny that the said findings of full value and the assessment made by the State Board, or either of them, were made by a committee of said State Board by a minority thereof, without due consideration of the facts in reference thereto, or without notice to complainant, or to all or any of the other eight said corporations, or that the action of the said State Board in making the said valuation and assessments was arbitrary and not based upon any principle, rule or

independent valuation, as alleged; but these defendants state and allege the fact to be that the said State Board of Equalization, in accordance with its duty and in compliance with the finding of the said Sangamon County Circuit Court, duly considered, as required by law, the fair cash value of the capital stock and franchise of complainant and each of the other eight said corporations, and in consideration of all of the facts and information before it in reference to the fair cash value of the capital stock and franchise of complainant and each of the other eight said corporations obtained by the said Board from complainant and from various sources, including quotations of sale of the stock of complainant and each of the other eight said corporations, and in consideration of its own knowledge of the subject matter found the full value of the capital stock and franchise of the complainant to be the sum of $12,000,000. and the assessed value of the same to be the sum of $2,400,000., and after deducting therefrom the assessed value of its tangible property assessed by the local assessor at the sum of $277,813. as the assessed value, made a net assessment of the capital stock and franchise of the said complainant of $2,122,187. and that the
49 said State Board also made and found the following assessment of the full fair cash value and the assessed value of the capital stock and franchise of the other eight said corporations as follows, viz:

Of the Chicago Electric Transit Company full value..	$1,172,000:
Assessed value	234,400.
Of the Chicago Jefferson Urban Transit Company—value	308,000:
Assessed value	61,600.
Of the Cicero & Proviso Railway Company—full value.	2,111,000:
Assessed value	422,000.
Of the Evanston Electric Railway Company—full value.	180,000:
Assessed value	36,000.
Of the North Chicago Electric Railway Company Full value	968,000:
Assessed value	193,600.
Of the North Side Electric Railway Company—Full value	230,000:
Assessed value	46,000.
Of the Ogden Street Railway Company—full value....	850,000:
Assessed value	170,000.
Of the Chicago North Shore Street Railway Company—Full value	1,227,500:
Assessed value	245,000.

which said assessments so made were thereafter certified to Philip Knopf, County Clerk of Cook County, and by him extended on the collector's warrant, together with the taxes due thereon, and the warrant placed in the hands of the collector for the collection of the taxes extended against said assessments.

12. These defendants further answering deny that the State Board

of Equalization included in its assessment of the capital stock and franchise of complainant the capital stock and franchise or any of the property of any other person or corporation; and deny
50 that by the valuation and assessment of each of the other eight said corporations, the said State Board of Equalization excessively or doubly assessed the property of complainant, or of any other person or corporation; but these defendants state and allege the fact to be that each of the other eight said corporations were on April 1, 1900, and still are corporations organized and existing under and by virtue of the laws of the State of Illinois, each with capital stock authorized, issued and fully paid, and each on said 1st day of April, 1900 exercising and owning valuable franchises and other property, all of which are required to be assessed, and was subject to assessment for purposes of taxation by the said State Board of Equalization, and that the said State Board of Equalization found the full fair cash value and the assessed value thereof as hereinabove set forth; but these defendants deny that the said assessments so made and returned by the said State Board, or any or either of them, were excessive, unequal or illegal, but state and allege the fact to be that the fair cash value of the capital stock and franchise of the said eight corporations on the 1st day of April, 1900, and subject to assessment by said State Board of Equalization at its session in 1901 was in excess of the sums hereinafter specified, viz:

The Chicago Electric Transit Company.....	$1,950,000:
" Chicago Jefferson Urban Transit Company.....	513,000:
" Cicero & Proviso Railway Company.....	3,318,000:
" Evanston Electric Railway Company.....	300,000:
" North Chicago Electric Railway Company.....	1,613,000:
" North Side Electric Railway Company.....	383,000:
" Ogden Street Railway Company.....	1,416,000:
" Chicago North Shore Street Railway Company..	2,050,000.

51 And these defendants further answering say that the local assessors did not assess any of the tangible or other property of either of the eight above named corporations in 1900, or thereafter, and no assessment of the property of either of the above named eight corporations was made by any tribunals, except the said assessments as above set out made by the said State Board of Equalization, and that the said valuations and assessments as made and returned by said State Board of Equalization upon and against each of the above named corporations for the year 1900 and the taxes extended thereon are proper, equitable and legal.

These defendants further answering deny that the State Board of Equalization in its valuation and assessment of the capital stock and franchise of complainant, over and above the assessed value of tangible property, in 1901 for the year 1900, included any stock of any Illinois corporation owned by complainant, or that it included any property in such valuation and assessment not subject to valuation and assessment by the said State Board; and deny that complainant is subjected to an assessment upon its property of $19,040,000.; and

deny that complainant or either of the other eight said corporations are out of proportion or upon any other or different basis than other corporations or persons in the State of Illinois.

These defendants further answering say that the matters involved in this proceeding do not arise under the constitution or laws of the United States, as alleged by complainant.

These defendants further answering say as to the matters and things in the said bill of complaint contained, not herein specifically answered, admitted or denied, these defendants neither admit
52 nor deny the same, but call for strict proof thereof.

And these defendants further answering deny that the complainant is entitled to the relief or any part thereof in said bill demanded, and pray the same advantage of this answer as if they had pleaded or demurred to the same; and pray to be hence dismissed with their reasonable costs and charges in this behalf most wrongfully sustained.

SAMUEL B. RAYMOND,
County Treasurer and ex-officio County Collector of Cook County,
JULIUS SOLOMON,
Town Collector of the Town of North Chicago,
By EDWIN W. SIMS,
County Attorney,
FRANK L. SHEPARD,
Ass't Co. Att'y,
WILLIAM F. STRUCKMAN,
Ass't Co. Att'y, Their Solicitors.

EDWIN W. SIMS,
County Attorney,
FRANK L. SHEPARD,
Ass't Co. Att'y,
WILLIAM F. STRUCKMAN,
Ass't Co. Att'y, Solicitors for said Defendants.

(Endorsed:) Filed Jan. 15, 1906. Marshall E. Sampsell, Clerk.

53 And on to-wit: the ninth day of June, 1902, there was filed in the clerk's office of said Court in said entitled cause a certain Master's Report in words and figures following to-wit:

54 UNITED STATES OF AMERICA, *Southern District of Illinois, ss:*

In the Circuit Court of the United States, Southern District of Illinois.

In Chancery. No. 8949.

CHICAGO CONSOLIDATED TRACTION COMPANY
vs.
SAMUEL B. RAYMOND ET AL.

Master's Report.

To the Honorable the Judges of said Court:

In obedience to an order of the court entered in the above entitled cause on the 25th day of April, A. D. 1902, by which it was referred to the undersigned to ascertain and determine, upon the basis prescribed therein, the amount of additional taxes for the year 1900 which should be paid by the complainant, I have been attended from time to time by the solicitors for the different parties and there has been introduced testimony which is herewith returned.

Upon an examination of this testimony and after hearing the suggestions of counsel at length, I find and report

That there is no amount to be paid by complainant as additional taxes for the year 1900.

55 In arriving at this result, I have computed the tax at 8.035 per cent., that being the second or omitted assessment rate determined by the County Clerk for the Town of North Chicago for the year 1900.

Deduction for deterioration has been calculated upon the full value of complainant's tangible personal property ascertained upon the basis that its equalized assessed value for the year 1900 was only 70 per cent. of such full value.

Insofar as computations submitted by counsel for defendants are based upon a different rate per cent. for taxation than that above stated, and upon a basis of value of complainant's tangible personal property upon which deduction for deterioration should be calculated, differing from that above indicated, such computations are not, in my opinion, under said order of reference sustained by the testimony.

All of which is respectfully submitted.

WALTER McC. ALLEN,
Master in Chancery of the Circuit Court of the United States, Southern District of Illinois.

I concur in the conclusions reached in the foregoing report.

HENRY W. BISHOP,
Master in Chancery of the Circuit Court of the United States, Northern District of Illinois.

Dated June 7, A. D. 1902.

[Endorsed:] Masters' Reports. Jrnl. inj.

56 CHICAGO CONSOLIDATED TRACTION CO.
VS.
STATE BOARD OF EQUALIZATION.

Index.

Witnesses.	Direct.	Cross.	Re-dr.	Re-cr.
Fred E. Smith.....	2	11		
" (Recalled).....	...	15	20	24
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William L. Southworth.....	31	32		
William B. Burcky.....	55			
(Recalled)	59			

Exhibits & Documentary Offers.

Page.	Whose.	No.	Description.
4	Comps.	Read in.	Income account for fiscal year, ending 12/31/00.
6	"	"	Computation on lines laid down in court's opinion.
7	"	"	Detail statement operating expenses 1/1/00 to 4/30/00.
9	"	"	Detail statement operating expenses 5/1/00 to 12/31/00.
22	"	"	Detail of charges against property accounts year ending 12/31/01.
29	"	"	Statement outstanding stocks and bonds 4/1/00.
30	"	"	Amount paid during fiscal year for interest on bonds of constituent companies.
37	"	"	Appropriation ordinance of City of Chicago of April 4, 1900.
39	"	"	Reduction ordinance passed Oct. 8, 1900.
40	"	"	Levying ordinance passed April 23, 1900.
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"	"	"	Appropriation ordinance passed 1/23/00 by Cook County.
41	"	"	Certified copy of tax levy for 1900 by South Park Commissioners.
46	"	"	Certified copy of tax levy for 1900 of $60,000. for bonded debt 7/27/00.
47	"	"	Certified copy of Town of Lake View levy of $60,000. for Lincoln Park for 1900, 10/11/00.
48	"	"	Certified copy of ordinance of town of North Chicago, 10/10/00 levying various amounts.
49	Comps.	"	Certified copy of ordinance of West Chicago Park Commissioners 7/18/00 levying various amounts.
56	"	"	Amounts collected and uncollected on above appropriation.
60	"	"	Amounts of taxes on warrants in favor of each municipality for 1900.
63	"	"	Objection of Guarantee Title & Trust Co. to Judgment of sale for delinquent taxes.

58 UNITED STATES OF AMERICA, *Southern District of Illinois, ss:*

In the Circuit Court of the United States, Southern District of Illinois.

In Chancery. No. 8849.

CHICAGO CONSOLIDATED TRACTION COMPANY
vs.
SAMUEL B. RAYMOND ET AL.

In the matter of the Chicago Consolidated Traction Company *vs.* the State Board of Equalization, it is stipulated by and between counsel that the testimony may be taken before Henry W. Bishop, Master in Chancery, instead of before Walter M. Allen, Master in Chancery.

Testimony taken before Henry W. Bishop, Master in Chancery, on Thursday the first day of May, A. D. 1902, at eleven o'clock in the forenoon.

Present: W. W. Gurley, Esq. representing Henry Crawford, Esq. Solicitor for Complainant; Frank L. Shepard, Esq., on behalf of defendant.

FRED E. SMITH called as a witness on behalf of the complainant, being first duly sworn, was examined in chief by Mr. Gurley and testified as follows:

Q. State your full name, please.
A. Fred E. Smith.
Q. What is your occupation, Mr. Smith?
A. Auditor of the Chicago Union Traction Company and of the Chicago Consolidated Traction Company.
Q. How long have you been auditor of those companies, respectively?
A. I have been auditor of the Chicago Union Traction Company since July 1, 1899, and of the Consolidated Traction Company since the first of May, 1900.

59 Q. Are you acquainted with the books and accounts of the Chicago Union Traction Company and the Chicago Consolidated Traction Company?
A. I am, they are kept under my supervision.
Q. What was the fiscal year of the Chicago Consolidated Traction Company in which the first of April, 1900, fell?
A. December 31, 1900 it ended, and it commenced January 1, 1900, both dates inclusive.
Q. You have already stated I believe that you are the auditor of that company?
A. I am and have charge of its books.
Q. And they are kept under your supervision, is that correct?
A. It is.

Q. Have you examined the books and figured from them the gross earnings of that company for the fiscal year ending on December 31, 1900, and also what its operating expenses were?

A. I have?

Q. Did you include in those operating expenses anything paid out for rentals?

A. I did not.

Q. What did you find the gross earnings to be?

A. $1,041,284.81.

Q. What did you find the total operating expenses to be?

A. $768,183.41.

Q. What is that?

A. Without depreciation.

Q. Go on.

A. And the depreciation, figured in the same manner as in the case of the Chicago Union Traction Company, being six per cent. of $1,726,214.26, full value of personal property said full value being obtained upon the assumption that the Assessors' full valuation of said personal property for the year 1900, to-wit. $1,208,350.00, was only 70 per cent. of the real value, the depreciation was figured at $103,572.86, making a total operating expense of $871,756.27.

Q. What did that leave the net earnings at?

A. $169,528.54.

Q. Does that include anything paid for taxes?

A. No.

Q. What were the taxes?

A. $33,663.76, leaving the net income after deducting taxes $135,864.78.

60 Q. Will that amount have to be further reduced by taxes to be paid under the decision rendered by Judges Grosscup and Humphreys?

A. It will.

Q. Have you attempted to deduct in this statement anything to be paid by reason of that decision?

A. No sir.

Q. Is this which I hand you a true statement which you have made from the books of account of the Chicago Consolidated Traction Company of earnings and expenses for the fiscal year ending December 31, 1900?

A. It is.

Q. Will you read that into the record.

A. I will and do.

(Said statement is in words and figures as follows, to-wit:)

Chicago Consolidated Traction Company.

Income Account for Fiscal Year Ending December 31st, 1900.

Gross Earnings:

Passenger Receipts		$952,005.52
Chartered Cars		2,177.50
Mail		1,276.96
Advertising		4,200.00
Miscellaneous		81,624.83
		$1,041,284.81
Operating Expenses		768,183.41
Depreciation, being 6% of $1,726,214.26 full value of personal property, said full value being obtained upon the assumption that the assessors' full valuation of said personal property for the year 1900, towit: $1,208,350.00, was only 70% of real value	103,572.86	
Total		871,756.27
Net Earnings		169,528.54
Deducting Taxes for 1900 already paid		33,663.76
Leaving Net income		135,864.78

This amount will be further reduced by the amount of Taxes to be paid under the decision rendered by Judge Grosscup.

61 Q. Have you prepared a statement as to what the result would be, following the lines of the decision of Judges Grosscup and Humphreys?

A. I have.

Q. Will you state the result of your investigation.

A. I capitalized the net earnings $142,762.68 on the six per cent. basis which produced a capital of $2,379,381.33 and equalized it on a 70 per cent. basis which produced a capital of $1,665,566.93; I took one-fifth of that for the assessed value, making $333,113.39? computed the taxes at 8.035 and produced $26,765.66. The taxes already paid amount to $33,663.76. We therefore have overpaid $6,898.10.

Q. In other words, the taxes payable by the Chicago Consolidated Traction Company for that year, if the assessment were ascertained under the rule laid down in that opinion were less than the amount actually paid by $6,898.10?

A. Yes, sir.

Q. Have you prepared a statement showing the manner in which

you arrived at what the tax would be, following the principles laid down in the decision aforesaid?

A. I have.

Q. Is that the statement which I hand you?

A. It is.

Q. Will you read it into the record at this point.

A. I will and do.

(Said statement is in words and figures as follows, towit:)

Net earnings before deducting Taxes		$169,528.54
Tax		26,765.66
True Net Income		142,762.88
Capitalized @ 6%	$2,379,381.33	
70% to equalize	1,665,566.93	
1/5 for assessed value	333,113.39	
Tax @ 8.035	26,765.66	
Taxes paid	33,663.76	
Making an over-payment of	6,898.10	

Mr. GURLEY: I want the record to show at this point that the statement which was shown as to what the tax would be, taking the rate 8.035, was merely by way of illustration; that I am appearing here for Mr. Crawford, in his absence; he has informed me he is going to challenge the rate; I know nothing about it beyond that. I wish to make that statement, Mr. Shepard, on the record.

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Q. Have you prepared a detail of the operating expenses of the Chicago Consolidated Traction Company covered by the statement you have given?

A. I have.

Q. Is it ready for production?

A. It is, and I produce it.

Q. Will you read into the record at this point?

A. I will and do. Said statement is as follows:

Chicago Consolidated Traction Company.

Detailed Statement of Operating Expenses, January 1st, 1900, to April 30th, 1900.

General Expenses:		
Salaries	$3,741.96	
Printing, Postage & Stationery	433.29	
Rent, Light & Heat	899.91	
Inspector and Police	1,533.20	
Legal	2,561.38	
Sprinkling	47.34	
Car License & Mileage Taxes	8,189.49	
Damages	95,370.03	
Interest and Discount	495.55	
Miscellaneous	1,040.22	
		$114,312.37

Maintenance Expense:

Repairs to Cars	10,500.60	
Repairs to Trucks	2,628.86	
Motors Repairs	6,324.08	
Tracks "	9,278.60	
Signals "	424.38	
Line "	4,684.07	
Power House	25,582.60	
Buildings "	67.08	
		$59,490.27

63 Motive Power Expense:

Pay Roll Trainmen	82,250.20	
" Power Stations	15,8.8.88	
" Car House	11,824.85	
" Signal Men	2,611.37	
Snow and Ice	991.27	
Water	782.94	
Fuel & Heating	71,738.40	
Oil, Grease & Waste	432.82	
Power Account	7,237.50	
Truck & Motor Oil & Grease	275.53	
		$194,014.76
Credit for Power Sold		55,953.65
Total Motive Power Expense		138,061.11
Pro Rata Expense		1,796.85
Total Operating Expenses		313,660.60

Chicago Consolidated Traction Company.

Detail of Operating Expenses, May 1st, 1900, to December 31st, 1900.

Maintenance—Wat & Structures:

Tracks and Roadway	$43,237.41	
Electric Line	3,603.50	
Buildings and Fixtures	4,457.02	
		$51,297.93

Maintenance—Equipment:

Steam Plant	$32,141.62	
Electric Plant	4,242.91	
Cars	26,378.34	
Elec. Equipment of Cars	11,374.72	
Misel. Equipment	975.74	
Misel. Shop Expenses	44.83	
		$75,158.16

Transportation.

Operation of Power Plant:			
Wages		$29,860.21	
Fuel		114,372.85	
64			
Water		1,519.57	
Lubricants and Waste		1,939.05	
Misel. Supplies & Expenses		1,785.72	
Hired Power		10,748.03	
Total		160,225.43	
Credit for Power Sold Net		85,992.06	
			$74,233.37
Operation of Cars:			
Superintendence	$2,519.95		
Wages: Conductors	97,286.22		
Motormen	92,229.70		
Other Car-serv. Emp.	2,029.19		
Car-house Employés	10,077.20		
Car Service Supplies	1,795.95		
Misel. Car-service Expenses	4,096.72		
Cleaning & Sanding Track	3,985.10		
Snow and Ice	18.00		
		$213,638.03	
Total Transportation			$287,871.40
Forward			$414,327.49
Forward			$414,327.49
General Expenses:			
Salaries, Officers		$2,980.31	
Salaries, Clerks		2,636.34	
Printing & Stationery		439.66	
Misel. Office Expenses		203.41	
Stable Expenses		794.55	
Advertising & Attractions		63.25	
Misel. General Expenses		3,669.14	
Accident Fund		21,331.09	
Legal Expenses		5,361.45	
Rent Land & Buildings		194.92	
Insurance		2,521.20	
Total			$40,195.82

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Total Operating Expenses May 1st, 1900 to Dec. 31st, 1900	454,522.81
Total Operating Expenses Jan. 1st, 1900 to April 30th, 1900	$313,660.60
Total Operating Expenses for Year	$768,183.41

Cross-examination.

By Mr. SHEPARD:

Q. Mr. Smith, does the item $1,041,284.81 comprehend all of the receipts of the company for the fiscal year mentioned?

A. Yes sir, it does.

Q. That comprehends everything which the company received during that year?

A. Everything.

The WITNESS: The item "Miscellaneous $81,624.83" includes $79,500.00 from the sale of power to the North Chicago Street Railway Company and the Chicago Union Traction Company. That is the power manufactured, supposed to be manufactured at the Edgewater Power House and is sold under contract. In turn they pay to the stockholders of the Chicago North Shore Street Railroad Company that $79,500.00 as interest on their bonds and dividend on their stock. Now, while we have included the $79,500.00 as a receipt, we have not included that $79,500.00 in the expenses, that being a rental.

Q. Did the company own any considerable amount of vacant real estate in 1900?

A. None that I know of.

Q. None at all?

A. It did not.

Q. Did it own any considerable amount of improved real estate?

A. It owns two power houses and a car barn.

Q. Does it own any improved real estate that is rented out or used for any other purpose than the operation of the company?

A. No, not at all.

Q. Your capitalized valuation here $2,379,381.33 is based on a capitalization on a six per cent. basis of $142,762.88, is it?

A. Yes sir.

Q. Do you know what the difference would be in the final result if you would capitalize the $169,528.54, computed the tax
66 upon that at the rate of 8.035, and then deducted the taxes paid on the current assessment of 1900?

A. We figured on the $169,528.54 to get the $26,765.66 and deducting that produces that $142,762.88.

Q. No, you do not figure the $169,528.54 to get the $26,765.66?

A. Yes, we do; then we take that out.

Q. Where do you get that $26,765.66?

A. That is done by an algebraic problem there by capitalizing the $169,528.54 and then that sum total, that produces the tax $26,-

765.66. We deducted that by our formula and that gave us $142,-762.88; and following the Judges' decision it would produce a tax of $26,765.66. Therefore it proves itself. I can go through that algebraic formula if you want me to. It starts in with 169,000 multiplied by 100, divide by 6, multiply by 70, divide by 100, and by one-fifth.

Q. That is to say you first deducted the tax paid or to be paid on the current assessment of 1900 and then you deducted the taxes ascertained to be proper under the decision of Judge Grosscup?

A. No, we made that calculation prior, we made it upon $169,-528.54, and that produced that tax, and then we deducted that and carried it out.

Q. $169,528.54 is the net earnings before the taxes are paid——

A. Yes.

Q. And the assessments of 1900 are deducted?

A. Yes, sir.

Q. Mr. Smith, does this item of $1,041,284.81 include all of the gross receipts of the Chicago Consolidated Traction Company, and all the gross receipts from the operation of the lines owned by all of its predecessor companies?

A. Every cent paid into that company from any source at all.

Q. My question is a little broader than the similar question I put to you a moment ago. The Chicago Consolidated Traction Company is a corporation organized under the laws of this state, and it has leased and acquired certain properties of several predecessor or several other corporations owning and heretofore operating street car lines in the City of Chicago, or County of Cook. Does this statement of the gross receipts of the Chicago Consolidated Traction include the gross receipts and every item of income of all
67 sources to the Chicago Consolidated Traction Company and to the other predecessor companies, or acquired by the operation of the roads heretofore owned and operated by each and all of those predecessor corporations?

A. It does.

Q. Did the Chicago Consolidated Traction Company in 1900 operate all of the lines theretofore operated by each of its predecessor corporations?

A. It did.

Q. Will you give me the names of the predecessors of the Chicago Consolidated Traction Company?

A. The Chicago & Jefferson, Urban Transit Company, North Side Electric Street Railway Company—every one of those seven companies are in that; we do not treat those companies as operating anything, the Consolidated operates all; the only receipts that the North Shore have is the $79,000.00 as I explained, and that is in here.

Signature waived by agreement of counsel.

Adjourned to 2:00 P. M. Saturday May 3, 1902.

2 p. m., SATURDAY, *May* 3, 1902.

Continuation pursuant to adjournment.
Present: Mr. Gurley, Mr. Shepard.

FRED E. SMITH, recalled for further cross-examination by Mr. Shepard, testified as follows:

Q. Mr. Smith, in your items under the designation "Maintenance Expense" aggregating $59,490.27, I will ask you to state whether or not there is included in that aggregate sum any expenditure for extension of plant or tracks or any part of the system, or for new machinery or cars of motors or tracks or enlargements or extensions or additions to buildings mentioned here, or any betterment to the property of the company?

A. No.

Q. What do you mean by "Repairs to cars" in this charge?

A. The ordinary repairs and painting and varnishing and repairs to trucks and fenders.

68 Q. What do you mean by "Repairs to Motors"?

A. That is supplying additional parts to motors and keeping them in running repair, commutators, reversers and so forth.

Q. This item with reference to power house, what was that for, do you know?

A. That was for maintenance, for repairing, any repairing to engines, boilers, and other equipments of the power houses.

Q. Was that for an addition on the power house?

A. Oh, no.

Q. Or extension to the power house?

A. None at all.

Q. Or any part of it.?

A. No sir.

Q. What does this item of $43,237.41 opposite "Tracks and Roadway" here mean?

A. That is for keeping in running repair the tracks and roadway, including ties and rails and so forth.

Q. Is there any extension of tracks or right of way in that?

A. This does not.

Q. Any replacement of tracks and ties?

A. Oh, there might be replacement of a few ties but not any general replacement.

Q. This item of $26,378.34, what does that cover?

A. That is for painting and varnishing and keeping up the ordinary repairs to the cars.

Q. In the statement there are two items included, this item is covered by two statements each covering a different period?

A. Yes, sir, and if you will notice there are more subdivisions of expense on this statement than there are on the other. I have changed the system of accounting, that is all.

Q. What is that item "Steam plant" for?

A. That is for repairs to boilers, putting in flues and all that sort of thing.

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Q. Any new boilers or engines?
A. No sir.
Q. What is that item for "Electrical equipment of cars" mean?
A. That refers to the motors, it is a different expression for this "Motor repairs", that is all, that refers to the motors and to the other electrical equipment of the cars.
Q. Are there any new motors included in that item?
A. There are not.

Q. The item for "Buildings and Fixtures" $4,457.02, what
69 was that?

A. That would be for making ordinary repairs for the buildings we used for car barns, power houses and so fourth, painting them, patching them up; there was no new building included in that item.
Q. Were there any new fixtures included in that item?
A. No new fixtures.
Q. Mr. Smith, going back to you- testimony in this case at the former hearing, your statement shows gross earnings from all sources $1,041,284.81?
A. Yes sir.
Q. And the gross operating expenses as $768,183.41?
A. Yes, sir.
Q. In that last item is there anything included for payment of interest on the bonded debt of the Chicago Consolidated Traction Company or any of the predecessor corporations?
A. There is nothing.
Q. Do you mean to say that that is exclusive of any interest payment on the bonded debt of the Chicago Consolidated Traction Company, or on the bonded debt of all of the predecessor corporations, whether assumed by the Consolidated Traction Company or not?
A. I do; it is the sum of the expense account you have just been questioning me about.
Q. The aggregate of the items in this statement?
A. Yes, sir.
Q. Is there any item included in this statement under any designation for payment of interest on bonds of the Chicago Consolidated Traction Company or on any of the bonds of the predecessor corporations by the Chicago Consolidated Traction Company?
A. There is not.
Q. Do you mean to say that in the deductions you have made from the gross earnings as shown by this statement upon which the calculation is made for the purpose of complying with the order of the court there is included no item for payment on interest of the bonded debt of the Chicago Consolidated Traction Company or any of the predecessor corporations?
A. I do, sir. To be absolutely fair, I ought to have deducted $79,500.00 from that item "Miscellaneous Receipts" because it just comes from the Chicago Union Traction Company and is paid right out on the other hand as rental to the Chicago North
70 Shore stockholders and bondholders.

Q. That is the item you explained the other day?

A. Yes, sir.

Q. As being received from the Chicago Union Traction Company and paid over to the——

A. Chicago North Shore stockholders and bondholders; but I left it in there because it is in the books and these are absolutely all the receipts of every name and nature.

Q. This deduction of this sum which you deducted from your gross earnings designated in your Consolidated statement here as "Operating Expenses" amounting to $768,183.41, is there anything included in that aggregate sum for payment as dividends or otherwise upon the stock of the Consolidated Traction Company or any of the stock of any of the predecessor corporations?

A. There is nothing.

Q. Whether it is shown upon your books under the designation of "Dividends" or "Interest" or "Rentals" or otherwise?

A. Yes, sir: It is not deducted in any way, shape or manner, that is what I mean to say; there is nothing in the operating expenses as shown here and they include no payment to anyone for interest on bonds or for dividend on stock.

Q. That is to say, in the payments made to the predecessor corporations under the leases or your contracts with predecessor corporations, were any payments made to the stockholders of the predecessor corporations or to bondholders of the bonds issued by the predecessor corporations are not deducted from the gross earnings of the Chicago Consolidated Traction Company in this calculation?

A. They are not.

Q. Whether those payments be designated as "Interest" payments or "Dividend" payments or "Rental" payments or otherwise?

A. They are not.

Q. Does that apply to all the stock outstanding and all of the bonds outstanding, speaking now with reference to the first of April, 1900?

A. It does.

Q. And does that apply to all of the stock and also to the stock outstanding and bonds outstanding of each of the predecessor corporations as of the first of April, 1900?

A. Yes, sir.

71 Redirect examination.

By Mr. GURLEY:

Q. Have you prepared a statement, a detailed statement of the charges against the property accounts of the Chicago Consolidated Traction Company for the year ending December 31 1901?

A. I have.

Q. Will you state the nature and purpose of that statement.

A. To show the additions to the property and the reconstruction charges.

Q. It includes exactly the same items, items of exactly the same nature, as the statement you prepared for the Chicago Union Traction Company?

A. It does.

Q. And both of these statements are taken directly from the books of the company?

A. They are.

Q. What is the total of the statement of the Consolidated Traction Company?

A. $23,061.76.

Q. Is that or any part of that amount deducted from the gross receipts as shown by the statement heretofore offered in evidence, in arriving at the net income as shown by that statement.

A. No.

Mr. GURLEY: We offer this in evidence.

(Said statement is in words and figures as follows, to-wit:)

Chicago Consolidated Traction Company.

Detail of Charges Against Property Accounts, Year Ending December 31st, 1901.

Construction:

Accounts.

C. Right of way:

Ogden St. R'wy Lines, Town of Cicero		$125.00

Account.

D. Track & Roadway Construction:

California Ave. Coal Track	$688.79	
C. & P. Coal Track	10.80	
Crawford & Lawrence Ave. Curve	294.31	
Elston & Montrose B'l'v'd Curve & Cross-over	703.87	
		$1,697.77

Account.

E. Electric Line Construction:

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California Ave. P. H. Feeder Constr.	$5,623.60	
" " Coal Track	576.16	
Transfer table, Elston barn	90.86	
North Shore Line	155.33	
		$6,445.95
Total Construction		$8,268.72

Real Estate:

Account.

G. Buildings & Fixtures:

C. & P. P. H. Tunnel for Coal Service....	$3,625.67	
Elston Ave. Salt House.....	14.68	
Elston Ave. Barn, Transfer table.....	38.75	
California Ave. P. H. Scales.....	251.25	
Total Real Estate.....		$3,930.35

Equipment:

Account.

I. Power Plant Equipment:

C. & P. P. H. New Generator.....	$1,836.92	
California Ave. P. H.....	478.10	
" " New Heaters.....	168.25	
Edgewater P. H.....	336.12	
" New Engine.....	38.25	
Total Equipment.....		$2,857.64

Reconstruction:

Lake St. 1st to 5th Avenue, Maywood....	$1,551.63	
Milwaukee & Elston Aves.....	795.32	
Evanston Ave. bet. Foster & Bryn Mawr..	4,148.16	
40th & Madiston Sts.....	19.01	
Clybourn Pl. Bridge Approach.....	11,237.34	
California Avenue.....	31.45	
Harvey Street.....	222.14	
Total Reconstruction.....		$8,005.05

Recapitulation:

Construction	$8,268.72	
Real Estate.....	3,930.35	
Equipment	2,857.64	
Reconstruction	8,005.05	
Total		$23,061.76

73 Recross-examination.

By Mr. SHEPARD:

Q. The items as shown in this statement, Mr. Smith, are what you carry on your books as the betterment of your property, are they, new construction?

A. New construction and betterment as distinguished from operating expenses.

Q. You say none of the items included in this statement or any part of them or any of it are deducted from the gross receipts of the company for this calculation?

A. They are not.

Mr. SHEPARD: That is all.

Signature waived by agreement of counsel.

3.00 p. m., MONDAY, *May* 12, 1902.

Continuation pursuant to agreement.

Present: Mr. Shepard, Mr. Gurley, E. S. Smith, Esq., representing the attorney-general of the State of Illinois.

Further testimony taken in the above-entitled cause before Henry W. Bishop, Esq., master in chancery in the northern district of Illinois, and Walter M. Allen, Esq., master in chancery in the southern district of Illinois.

FRED E. SMITH, recalled for further cross-examination, was examined by Mr. Smith and testified as follows:

Q. What relation does the Chicago North Shore Street Railway Company bear to the Consolidated Traction Company? Are you an officer of the Chicago and North Shore Street Railway Company?

A. I am not.

Q. Are you an officer of the Consolidated Traction Company?

A. Only by appointment.

Q. What relation do you bear to the Consolidated Traction Company?

A. I am the auditor.

Q. I will ask you whether or not the Consolidated Traction
74 Company is the lessee of the Chicago North Shore Street Railway Company?

Mr. GURLEY: I will have to object to that because he is only the auditor of the Company and does not know the legal relations existing between the two companies.

Mr. SMITH: I do not think the question is objectionable. If he don't know he can say he don't know, but if he does know he can state it.

(Question read.)

A. I think it is.

Q. As auditor, do you keep an account between the Consolidated Traction Company and the Chicago North Shore Street Railway Company?

A. Yes.

Q. What was the amount of outstanding shares of the stock of the Chicago North Shore Street Railway Company on the first of April, 1900?

A. I would have to refresh my memory as to that.

Q. Is there anything here you can refresh your memory with?

A. With the Investors Manual" I should say that is correct.

Q. The total shown there is $650,000.00 stock and $675,000.00 bonds?

A. That is correct, $650,000.00 of the stock.

Q. And what amount of bonds?

A. $675,000.00.

Q. Was any dividend paid on those shares of stock for the year which includes April 1, 1900?

A. The Chicago Consolidated Traction Company paid to the treasurer of the Chicago North Shore Railroad Company a half-year rental, I think it was paid half-yearly it was to be equal to six per cent. divide-d on that stock.

Q. Six per cent. per annum?

A. Yes sir.

Q. Who, if anybody, paid the interest on those bonds?

A. The Chicago Consolidated Traction Company.

Q. What was the rate of interest upon the bonds?

A. Six per cent.

Q. There were seven other street railway companies included in the operation of the Chicago Consolidated Traction Company were there not?

A. The Consolidated Traction Company is made up of seven companies.

Q. Were there any bonds of those companies outstanding?

A. There were.

75 Q. To what amount?

A. I would not like to give you this a statement as of that date, I should have to refer to my books on that, I suppose you are referring to April 1, 1900.

Q. Yes, April 1, 1900.

A. I should prefer to refer to my books.

Q. Who paid the interest, if any body, on these bonds?

A. The Chicago Consolidated Traction Company.

Q. What was the amount of the bonds of the Consolidated Traction Company outstanding April 1, 1900?

A. None.

Q. What was the amount of the stock of the Consolidated Traction Company outstanding April 1, 1900?

A. I would have to refer to this. It was a little less than $15,000,000.00.

Q. Only a little less, as you remember?

A. I think it is less by about $500,000.00.

Q. I will ask you to put in the record when were the bonds of the Consolidated Traction Company issued?

A. I believe it was the 16th of April, 1900.

Q. To what amount?

A. $6,750,000.00.

Q. Has the Consolidated Traction Company paid the interest on those bonds since that time?

A. Yes.

Mr. SMITH: I would like to have this before the Master: The amount of the bonds of these several companies outstanding April 1, 1900, the rate of interest that Mr. Smith has testified the Consolidated has paid, that interest whatever it is.

Mr. GURLEY: We will make that up and send it over here in order that it may be inserted in the record.

Signature waived by agreement of counsel.

Adjourned to 2 p. m. Tuesday, May 13, 1902.

2.00 p. m., TUESDAY, *May* 13, 1902.

Continuation pursuant to adjournment.

Present: Mr. Shepard, Mr. Gurley, Mr. Smith.

Mr. GURLEY: I present to the Master the statement called for at the last meeting and which was agreed to be furnished and
76 which is as follows:

Statement of Outstanding Stocks and Bonds Chicago Consolidated Traction Company and Constituent Companies on April 1st, 1900.

	Capital Stock.	Bonds.	Tota
Chicago Consol. Traction Co..	$14,967,350.00	.....	$14,967,350.00
Chicago Elec. Transit Co...	600.00	$1,097,000.00	1,097,600.00
North Side Elec. St. Ry. Co...	.....	155,000.00	155,000.00
Ogden Street Ry. Co.	.....	576,000.00	576,000.00
Chic. & Jeff. Urban Transit..	59,200.00	208,000.00	267,200.00
Cicero & Proviso St. Ry Co....	700.00	1,986,000.00	1,986,700.00
Evanston Electric Ry Co...	.....	130,000.00	130,000.00
North Chic. Elec. Ry Co.....	.....	868,000.00	868,000.00
	15,027,850.00	5,020,000.00	20,047,850.00

Amount Paid During Fiscal Year for Interest on Bonds of Constituent Companies.

Chicago Electric Transit Co.....	65,820.00
North Side Electric Ry Co.....	9,300.00
Ogden Street Ry. Co.....	34,560.00
Chicago & Jefferson Urban Transit Co.....	12,480.00
Cicero & Proviso St. Rwy. Co.....	100,080.00
Evanston Rwy. Co.....	7,800.00
North Chicago E-ectric Ry Co.....	52,080.00
	282,120.00

Amount of Rental Paid During Fiscal Year Ending December 31st, 1900.

Chicago North Shore St. Rwy 6% on Capital Stock...	39,000.00
Chicago North Shore St. Ry. 6% on First Mortgage Bonds	40,500.00
	79,500.00
Grand Total of Interest & Rental Charges.....	361,620.00

10:00 a. m., WEDNESDAY, *May* 14, 1902

Parties met pursuant to notice.
Present: Mr. Gurley, Mr. Shepard.

77 WILLIAM L. SOUTHWORTH, called as a witness on behalf of the defendant, being first duly sworn, was examined in chief by Mr. Shepard and testified as follows:

Q. What is your name?
A. William L. Southworth.
Q. Where is your residence?
A. 536 Ogden Street, Chicago.
Q. Your occupation?
A. Clerk in the County Clerk's Office.
Q. How long have you been a clerk in the County Clerk's office?
A. Fifteen years.
Q. The County Clerk of Cook County?
A. Yes, sir.
Q. Mr. Southworth, I will ask you to state if you know what the rate for general taxes in the Town of North Chicago, Cook County, Illinois, was ascertained to be by the County Clerk for the year 1900, and by which the taxes for 1900 were extended upon the Collector's warrant?
A. Yes; 8.81 7/10.
Q. That is on each one hundred dollars, was it, valuation?
A. Yes sir.
Q. Mr. Southworth, the Chicago Consolidated Traction Company and the Chicago Union Traction Company each have their main offices and principal places of business in the Town of North Chicago Cook County, Illinois?
A. Yes sir.

Cross-examination.

By Mr. GURLEY:

Q. Mr. Southworth, what was the rate at which the second assessment, tax on the second assessment in 1900 was made upon the property of the Union Traction Company and Consolidated Traction Company was assessed?

Mr. SHEPARD: Objected to as immaterial.
The MASTER: Answer subject to the objection.

A. The rate in the Town of North Chicago is 8.03 5/10.
Q. And that rate was assessed against the Union Traction Company and the Consolidated Traction Company?
A. Yes, sir.
Q. That rate was determined by the County Clerk was it, Mr. Southworth?
A. Yes,sir.
Q. Especially for that second assessment?
A. Yes.

Signature waived by agreement of counsel.

10.00 a. m., SATURDAY, *May* 24, 1902.

Parties met pursuant to agreement.
78 Present: Mr. Crawford, E. S. Smith, Assistant Attorney General, Mr. Shepard, Julius A. Johnson, Esq.

Mr. JOHNSON: We desire, if the Court please, to offer some testimony this morning as to what was the appropriation, the amount and items of the appropriation made by the City of Chicago and other municipalities in the year 1900 on which this tax was extended. We desire to show and offer to show

First. Just what was the amount and what were the items of the appropriation bill passed by each municipality in the County that year on which this levy rests.

Then the levying ordinance.

Then we desire to introduce and offer to introduce the warrant or certified copy thereof made by the County Clerk for the collection of this tax of 1900.

This warrant was delivered to the County Treasurer, first to the town collectors and then to the County Treasurer or Collector for collection, and we shall offer and do offer to introduce the County Treasurer's books or a summary from the books of the County Treasurer showing the exact amount of the tax from each municipality which was collected in that year, intending thereby to show that each of those municipalities had received already practically and fully more than the tax which they ap-r*i*priated and levied; in some cases, they have been overpaid; in other cases they have been paid all except a trifling amount; and for that pu*r*pose

I first offer in evidence the appropriation ordinance of the City of Chicago making appr*i*proations for its corporate purposes, and for school purposes, and for library purposes, for the year 1900. This ordinance will be found on page 2809 of the Council Proceedings. It was passed on th*r* 4th day of April, 1900, and reads as follows:

Mr. SHEPARD: We object to the introduction in evidence of the ordinance just suggested and to all of the evidence that has been suggested by counsel for complainant for the purpose for which he has stated it was offered. That goes to question simply as to whether or not this complainant should be compelled to pay any taxes upon the

re-assessment of their property in view of the fact that they
79 claim that the tax levies by the municipalities have been fully or partly met by the taxes paid by other property owners based upon the assessments made in 1900, for 1900.

We object to it in the first place because it is not within the scope of the order of reference, your Honors.

In the second place, because it is immaterial to this hearing or to the final hearing in this case.

The first objection it seems to me should be sufficient for this stage of the proceedings, that is in this hearing on this preliminary matter. The order of reference reads; "That the court finds that the complainant should pay an additional tax and it is ordered that this cause be referred to Walter M. Allen one of the Masters in Chancery of this Court for the purpose of ascertaining that preliminary payment. Said Master is directed to ascertain and determine the amount of said additional taxes upon the following basis:"—that I take to be the scope of the inquiry—"the full value of the complainant's capital stock and franchises on April 1st, 1900, shall be ascertained by capitalizing the true net earnings of the complainant, in its fiscal year covering April 1, 1900, upon a ratio or basis of six per cent. that is to say, said full value shall be taken to be 16⅔ times said net earnings. This full value shall be equalized by deducting 30 per cent. therefrom and one-fifth of said equalized value so ascertained shall be taken as the equalized value upon which complainant should have paid taxes for the year 1900, and upon said amount or equalized assessed value so ascertained taxes at the true rate of 1900, of not to exceed 8.817 per cent. (exclusive of interest and penalties) shall be computed or extended, and from the amount of the taxes so ascertained shall be subtracted the taxes already paid by complainant for the year 1900," etc.

Mr. CRAWFORD: I submit that the most proper way to deal with this situation is to allow us to go on and make our formal proof and to allow that to be admitted subject to the objection and to let the whole matter go before the court so that the court can determine
80 whether or not the evidence is admissible and relevant and material. It will take but a little while to prove these things.

Master ALLEN: Mr. Bishop and myself are agreed that the testimony offered for the purpose for which it is offered is incompetent and irrelevant under the orders in this case. We, however do not desire to prevent counsel from having the record made of the evidence, but this is an intimation of our opinion and the effect it will have on our report. We do not anticipate that the defendants will make a cumbrous record but will be merely a short one and under the circumstances indicated, the evidence may be for the time admitted and a record made.

Mr. SHEPARD: If this testimony is to go in, we feel that we should introduce testimony as to the value of the stocks and bonds of this complainant, and that will prolong this hearing unnecessarily.

Mr. SMITH: I suppose it is understood that our objection goes to all the class of evidence Mr. Johnson stated he intended to offer, under the ruling of the Master?

The MASTER: For the purpose for which it is offered.

Mr. JOHNSON: So you need not interpose further objection in order to maintain the objections.

The heading of this ordinance reads: "An order Making Appropriations for Corporate, School and Public Library Purposes for the Fiscal Year from January 1, 1900, to December 31, 1900. Be it ordained by the City Council of the City of Chicago.

SECTION 1. That the following sums, or so much thereof as may be authorized by law and as may be needed, be and the same are hereby appropriated for corporate purposes of the City of Chicago, and for school and also for library purposes, as herein specified, for the fiscal year commencing January 1, 1900, and ending December 31, 1900;"

The- follow the various appropriations making a total for corporate purposes, the amount appropriated for taxes $6,693,251.60.

Following that there is one subdivision headed "Interest Account," and those items, there are four or five of them which will necessarily be added to make the total amount for corporate purposes.

81 They are as foliows:

For payment of interest in city indebtedness.....	$900,000.00
Add 4½ per cent. for loss in collection of tax.....	40,500.00
General Sinking Fund.....	150,000.00
Add 4½ per cent. for loss in collection of tax.....	6,750.00
River improvement sinking fund.....	60,000.00
Add 4½ per cent. for loss in collection of tax.....	2,700.00
School sinking fund.....	50,000.00
Add 4½ per cent. for loss in collection of tax.....	2,250.00
Sewerage sinking fund.....	104,000.00
Add 4½ per cent. for loss in collection of tax.....	4,680.00

Then under the heading of "The Chicago Public Library" the total appropriation is $263,397.00.

Then follows the amount of school taxes, and that is as follows:

New buildings and sites.....	$2,500,000.00	
Parental School buildings.....	200,000.00	
Add loss and cost of collection...	160,000.00	
Making a total of.....		$2,860,000.00

for building purposes.

Then under the heading "Educational purposes,"

Educational purposes.....	$7,455,000.00	
Add loss and cost of collection...	445,000.00	
	7,900,000.00	
Estimated revenue from other sources	750,000.00	
Making a total of.....		$7,150,000.00

Indebtedness.

Bonds maturing in 1900	$59,500.00
Interest due in 1900	32,800.00
Bonds maturing in 1901	36,800.00
Interest due in 1901	29,200.00
	$158,300.00
Add loss and cost of collection	7,700.00
Due in settlement with Trustees of that portion of Austin un-annexed on division of property, as per report to be made to City Council	29,206.44
82 Add loss and cost of collection	1,460.32
Making Total school tax appropriation	$10,206,666.76

I also offer in evidence the following ordinance passed by the City Council of the City of Chicago on the 8th day of October 1900, and found on page 1158 of the Council Reports:

"The following is the ordinance as passed:

Be it ordained by the City Council of the City of Chicago:

SECTION 1. That the following reductions be made in the ordinance making appropriations for corporate, school and public library purposes for the fiscal year from January 1, 1900, to December 31, 1900, and passed April 4, 1900, and that the heads of departments shall furnish to the City Comptroller at the earliest possible moment the details of the following amounts, showing the specific items to be reduced:" From Fund for Corporate Purposes" a total of $1,647,500.00. "This ordinance shall be in force from and after its passage."

I also offer in evidence the levying ordinance of the City of Chicago for the year 1900, found on page 49 of City Council Proceedings, passed on the 23rd day of April, 1900, reciting "That the following sums, or so much thereof as may be authorized by law and as may be needed, be and the same are hereby appropriated for corporate purposes of the City of Chicago, and for school and also for library purposes, as hereinafter specified, for the fiscal year commencing January 1, 1900, and ending December 31, 1900:"

I will not repeat the items, they are the same as in the appropriation ordinance of April 4.

I now offer in evidence the appropriation ordinance passed for the year 1900 by the County of Cook at its meeting on January 23, 1900, and found on page 157 of its official records for the year 1899–1900, the last clause of which reads as follows: "Total amount to be appropriated" and under that, "Total to be realized by taxation as per resolution $2,481,348.44."

83 I offer in evidence a certified copy of the tax levy for the year 1900 of the South Park Commissioners in and by which they levied the sum of $611,056.00.

(Said certified copy is in words and figures as follows, towit:)

An Ordinance Concerning the Tax Levy for the Current Year.

Be it ordained by the South Park Commissioners

SECTION 1. That the South Park Commissioners hereby specified the sum of Three Hundred Thousand ($300,000) dollars which this Board estimates as necessary for the payment of the interest on the bonds issued by this Board prior to June 26th, 1885, and for the payment of the principal of such said bonds as are required to be paid during the current year, and that which in addition thereto will be required for the improvement, maintenance and government of the South Park during the current year.

SECTION 2. That the South Park Commissioners in addition to the sum mentioned in the preceding Section, hereby levied a tax of Forty thousand ($40,000) dollars upon the property within its jurisdiction to pay the interest as it falls due on the bonds issued under and in pursuance of an "Act" entitled "An Act in Relation to the World's Columbian Exposition" approved August 5th, 1890, and also to pay and discharge that portion of the principal of said bonds required to be paid during the current year, and direct the same to be collected in the manner provided for in the Collection of other park taxes.

SECTION 3. That the South Park Commissioners in addition to the sum mentioned in the preceding Sections, hereby levies a tax of Three hundred Eleven Thousand and fifty six ($311,056,*000*) dollars upon the taxable property embraced in its park district under and in pursuance of an act entitled An Act to Enable Park Commissioners to Maintain and Govern Parks, Boulevards, Driveways, Promenades and pleasure Grounds under their control, Approved April 21, 1899, and ordains and certifies that said amount in addition to the sums mentioned in the preceding Sections is necessary for the proper improvement governance and maintenance of the Park property under its control.

84 SECTION 4. That the sum of Six hundred fifty one thousand and fifty six (651,056) dollars specified to be collected as taxes for the current year be, and the same is hereby levied and assessed upon the taxable property in the Town of South Chicago, Hyde Park and Lake, in the County of Cook and State of Illinois, according to the valuation of the same as made for the purpose of State and County taxations.

SECTION 5. That the South Park Commissioners hereby certifies to the County Clerk of said county the several amounts above specified aggregating six hundred fifty one thousand and fifty six (4651,056) dollars, and the said County Clerk is required to apportion and extend the said sum of Six hundred fifty one thousand and fifty six ($651,056) dollars upon the taxable property in the Towns of South Chicago, Hyde Park and Lake in said County of Cook in the next general tax Warrants for the Collection of the State and County taxes in said several towns in the manner provided by law.

SECTION 6. That the Secretary is hereby directed to transmit to the County Clerk of said Cook County on or before the second Tues-

day of August, A. D. 1900, a copy of this ordinance duly certified by said Secretary as the estimate and certificate required by law.

STATE OF ILLINOIS,
County of Cook, South Park Commissioners, ss:

I, Edward G. Shumway, Secretary of the South Park Commissioners and Custodian of its records and files, do certify that the foregoing is a true copy of an ordinance adopted by the South Park Commissioners on the 9th day of May, 1900.

In Testimony Whereof, I have hereunto set my hand and the Seal of said South Park Commissioners this Seventh day of June, A. D. 1900.

EDWARD G. SHUMWAY,
[SEAL.] *Secretary of the South Park Commissioners.*

(Endorsed on the back as follows:)
Filed Jun- 14, 1900, Philip Knopf, County Clerk.

85 STATE OF ILLINOIS, *County of Cook, ss:*

I, Philip Knopf, Clerk of the County Court of Cook County, in the State aforesaid, do hereby certify that the attached statements are a true and correct copy of the Tax levies for the South Park, West Park, West Chicago Bonded Indebtedness, Lincoln Park, North Chicago and Lincoln Park, Lake View for the year A. D. 1900, all of which appears from the records and files in my office.

In witness whereof, I have hereunto set my hand and affixed the seal of said County Court, at my office in the City of Chicago in said County, this 17th day of May, A. D. 1902.

PHILIP KNOPF,
Clerk of the County Court.

86 Mr. JOHNSON: I offer in evidence the resolution of the Town of West Chicago, dated the 27th day of July, 1900, levying the sum of $60,000.00 for its bonded debt.

I offer in evidence certified copy of the resolution of the supervisor of the Town of Lake View levying the sum of $60,000.00 for the improvement, maintenance and government of Lincoln Park for the year 1900. This ordinance is on October 11, 1900.

Another ordinance of the Town of North Chicago dated October 10th for levying the following items for the maintenance of Lincoln Park. They are as follows:

For the maintenance and improvement of the Park, the sum of	152,250.00
For the payment of interest on the Lake Shore Protection bonds, the sum of	25,000.00
For sinking fund, for the payment of said Lake Shore Protection bonds, the sum of	25,000.00
For cost of collection the sum of	1,000.00
For loss on collection the further sum of	2,000.00
For deficiency on former collections, losses the further sum of	2,323.44

I also introduce in evidence an ordinance of the West Chicago Park Commissioners dated the 18th day of July, 1900, levying certain rates per cent. under various laws, all of which are set out in detail, amounting to 11½ mills on the property in the West Town of Chicago, for that year.

(Said documents are in words and figures as follows, to-wit:)

87 To Philip Knopf, County Clerk of Cook County, Illinois:

We, the Corporate Authorities of the Town of West Chicago in the County of Cook and State of Illinois, do hereby certify to you that the following amount of money to be raised by taxation is required for the purpose of meeting the bonded indebtedness of the said Town of West Chicago for the ensuing year.

For West Chicago bonded indebtedness..... $60,000.00

In Witness whereof we hereunto set our hands and caused the Seal of said Town to be affixed hereto, this twenty-seventh day of July 1900.

JOHN J. McLAUGHLIN,
Supervisor of the Town of West Chicago.
EDWARD B. WARWICK,
Clerk of the Town of West Chicago.
JOSEPH J. KLEIN,
[SEAL.] *Assessor of the Town of West Chicago.*

(Endorsed on the back as follows)
Filed Dec. 11, 1900, Philip Knopf, County Clerk.

Town of Lake View October 11, 1900—I, Henry Best, Supervisor of th Town of Lake View in the County of Cook and State of Illinois pursuant to law, do hereby certify that the amount of money to be raised by taxation on property in said Town of Lake View in said County and State, on the assessment for 1900, for the purpose of paying any debt contracted by the Com-
88 missioner of Lincoln Park which may fall due during the next year and for the improvement, maintenance and government of said park during the next succeeding year, agreeable to an act of the General Assembly of the State of Illinois Entitled "An Act to fix the boundaries of Lincoln Park and provide for its improvement" approved April 19, 1869, and Amendments thereto is Sixty Thousand ($60,000.00) dollars.

HENRY BEST,
Supervisor Town of Lake View.

I concur in the above levy.
STEPHEN A. BERTRAND,
Supervisor Town of North Chicago.

(Endorsed on the back as follows:)
Filed October 10th, 1900. Philip Knopf, County Clerk.

TOWN OF NORTH CHICAGO, *October* 10, 1900.

I, Vincent H. Perkins, Supervisor of the Town of North Chicago in the County of Cook and State of Illinois, pursuant to law, do hereby certify that the amount of money to be raised by taxation on property in said Town of North Chicago in said County and State on the assessment for 1900, for the purpose of paying any debt contracted by the Commissioners of Lincoln Park, which may fall due during the next year and for the improvement, maintenance and government of said Park during the next succeeding year agreeable to an act of the General Assembly of the State of Illinois, entitled An Act to fix the boundaries of Lincoln Park and provide for its improvement" "Approved April 19, 1869, and Amendments thereto, is One hundred and Fifty-two Thousand Two hundred and fifty ($152,250.00) dollars.

And I further certify that a further sum of Twenty-five thousand dollars ($25,000.00) is to be raised on said property in said Town, in said County and State for the payment of interest on Shore Protection Bonds.

And I further certify that a further sum of Twenty five thousand dollars ($25,000.00) is to be raised on said property in said Town in said County and State for a Sinking Fund for the payment of said Shore Protection Bonds.

89 And I further certify that a further Sum of One Thousand dollars ($1000.00) shall be raised on said property, in said Town in said County and State for cost of Collection, and a further sum of Two Thousand dollars ($2,000.00) for loss on Collection and a further sum of Two Thousand Three Hundred and twenty-three dollars and forty-four cents ($2,323.44) for deficiency on former Collection loss.

VINCENT H. PERKINS,
Supervisor Town of North Chicago.

(Endorsed on the back as follows:)
Filed October 10th, A. D. 1900, Philip Knopf, County Clerk.

Whereas, It is necessary that all of the taxes now allowed by law for the purpose of governing, maintaining and improving the parks and boulevards now under the control and management of the West Chicago Park Commissioners, and also for the purpose of paying all other necessary incidental expenses incurred and to be incurred by said Commissioners in and about the same during the *nixed* succeeding year, be levied; therefore, be it

Resolved by the West Chicago Park Commissioners, That there should be duly levied by the proper authorities, lawfully constituted for that purpose, and under the Acts of the General Assembly of the State of Illinois, particularly mentioned in the certificate hereto attached and marked Exhibit "A" a tax of 11½ mills on each dollar's worth of property in the Town of West Chicago, according — the valuation of such property, as made for the purpose of State and County Taxes, for the purpose of enabling said West Chicago Park Commissioners to pay for the government mainte-

nance and improvement of the several parks and boulevards now under the control and management of such Park Commissioners, and for the purpose of enabling said Park Commissioners to pay all other necessary and incidental expenses incurred, and to be incurred in and about and incident to the government, maintenance, management and control of the several parks and boulevards now under the management and control of *the several parks and boulevards now under the management and control of* said Park
90 Commissioners, and also for paying the interest on all bonds and other indebtedness heretofore lawfully incurred and hereafter to be lawfully incurred by said Park Commissioners pursuant to the laws now in force in this State.

Resolved, Further by the West Chicago Park Commissioners, That the President and Secretary thereof immediately transmit to the Assessor, Supervisor and Clerk of the Town of West Chicago and to the County Clerk of Cook County, under the seal of this Board, a copy of the foregoing resolutions and the certificates thereto attached.

EXHIBIT "A."

Certificate.

The West Chicago Park Commissioners hereby certify That the several Acts of the General Assembly authorizing the tax estimate by the West Chicago Park Commissioners necessary to be levied for the next ensuing year upon each dollar's worth of the property subject to taxation in the Town of West Chicago, according to the valuation thereof for taxation for State and County purposes, are as follows, namely:

First. ½ mill.—"An Act to amend the charter of the City of Chicago to create a Board of Park Commissioners and authorize a tax in the Town of West Chicago, and for other purposes," approved and in force February 27, 1869.

Second. 2½ mills.—Also "An Act in regard to the completion improvement and management of public parks and boulevards and to provide a more efficient remedy for the collection of delinquent assessments" approved May 2, 1873, and amended by an Act approved May 31, 1879 and in force July 1, 1879.

Third. 1 Mill.—Also "An Act to enable Park Commissioners to improve, govern and maintain the parks and boulevards under their control" approved June 6 1885, and in force July 1, 1885.

Fourth. 1½ mills.—Also "An Act to authorize the corporate authorities of towns to issue bonds for the completion and improvement of public parks and boulevards, and to provide a tax for the payment of the same" approved June 12, 1891, and in force July 1, 1891.

91 Fifth. 1 mill.—Also "An Act to enable Park Commissioners to maintain and govern parks and boulevards under their control" approved June 17, 1893, and in force July 1, 1893.

Sixth. 1½ mill-.—Also "An Act to authorize the corporate

authorities of towns to issue bonds for the completion and improvement of parks and boulevards and to provide a tax for the payment of the same," approved June 21, 1895, and in force July 1, 1895.

Seventh. 2 mills.—Also "An Act to enable Park Commissioners to maintain and govern the parks and boulevards under their control" approved June 17, 1895, and in force July 1, 1895.

Eighth. 1½ mills.—Also "An Act to authorize the corporate authorities of towns to issue bonds for the completion and improvement of public parks and boulevards and to provide a tax for the payment of the same," approved June 9, 1897, and in force July 1, 1897.

On motion of Commissioner Pavlicek seconded by Commissioner K-opf, that the foregoing resolution be adopted the ayes and noes were called as follows:

Commissioner	K-opf	aye.
"	Litchenberger	aye.
"	Norden	aye.
President	Suddard	aye.

5 votes aye; declared carried.
Absent—Commissioners Bloxet and Graham.
Approved,

J. W. SUDDARD, *President.*

STATE OF ILLINOIS, *County of Cook, ss:*

I, Ernest G. Schubert, Secretary for the West Chicago Park Commissioners, do hereby certify that the above and foregoing is a true and correct copy of a resolution adopted by the Board of West Chicago Park Commissioners at an adjourned regular meeting, held Wednesday, July 18, 1900.

In Witness Whereof, I hereunto subscribe my name and affix the Corporate Seal of said West Chicago Park Commissioners this the 20th day of July, A. D. 1900.

E. G. SCHUBERT, *Secretary.*

Filed July 28, 1900.

PHILIP KNOPF,
County Clerk.

92 STATE OF ILLINOIS, *County of Cook, ss:*

I, Philip Knopf, Clerk of the County Court of Cook County, in the State aforesaid, do hereby certify that the attached statements are a true and correct copy of the Tax Levies for the South Park, West Park, West Chicago Bonded Indebtedness, Lincoln Park, North Chicago and Lincoln Park, Lake View for the year A. D. 1900, all of which appears from the records and files in my office.

In witness whereof, I have hereunto set my hand and affixed the seal of said County Court, at my office, in the City of Chicago in said County, this 17th day of May, A. D. 1902.

[SEAL.]

PHILIP KNOPF,
Clerk of the County Court.

WILLIAM R. BURCKY, called as a witness on behalf of the complainant, being first duly sworn was examined in chief by Mr. Johnson and testified as follows:

Q. Please state your name, residence and occupation.

A. William R. Burcky, Chicago bookkeeper in the County Treasurer's office.

Q. How long have you been employed in the County Treasurer's office?

A. About twenty years.

Q. Mr. Burc*h*y, have you made up from the County Treasurer's books for the year 1900 a statement of the total amounts extended on the warrants for each year and the total amounts collected under each warrant for each municipality, and a statement showing the amount uncollected in favor of each municipality from the general tax levy of that year?

A. I have the tax warrant of the 1900 tax, yes, sir.

Q. If you have made up from the County Treasurer's books and brought with you such a statement, you may produce the same. First I will ask you to state what the amount of taxes is, extended on the warrant for the year 1900 in favor of the City of Chicago?

Mr. SHEPARD: That is objected to as incompetent and immaterial for the reasons already stated.

Q. Mr. Burc*h*y, I will ask you if you have prepared in convenient form a statement of the amount of State, County, Chi-
93 cago City, Chicago School, Chicago Library, South Park, Lincoln Park, Lake Shore Protection Fund, West Park, Boulevard and Park, and Sanitary District taxes extended on the tax warrants for the year 1900 and the amounts collected on such warrants, and the amounts uncollected?

A. Yes, sir.

Mr. JOHNSON: Now, I offer to prove that the books show the following; and I also offer in evidence the statement prepared by Mr. Burc*h*y, as follows:

	Amount on warrant for the year 1900.	Uncollected amounts.	Amount collected by town and county collectors.
State Tax.....	$1,552,346.12	53,302.22	1,499,043.90
County Tax	2,456,064.89	83,907.89	2,372,257.00
Chicago City Tax.....	6,953,716.00	262,160.60	6,691,555.40
Chicago School Tax....	10,026,965.82	333,175.73	9,693,790.09
Chicago Library Tax...	271,308.00	9,764.71	261,543.29
South Park Tax..... .	662,187 01	23,498.82	638,688.19
Lincoln Park Tax.....	223,049.69	8,773.86	214,275.83
Lake Shore Pro. Fund Tax..	51,097.22	1,922.08	49,175.14
West Park Tax.....	641,687.87	13,176.47	628,511.40
Boulevard & Park Tax.....	29,833.43	665.82	29,167.61
Sanitary District Tax..	1,374,047.88	59,562.67	1,314,475.21
Total.....	$24,242,303.93	$849,810.87	$23,392,493.06

Mr. JOHNSON: I offer to prove by certified copy of the objection of the Title Guarantee & Trust Company, a taxpayer of the City of Chicago, made in the County Court of Cook County, in the matter of the application of Samuel B. Raymond, County Treasurer and *ex-officio* County Collector of Cook County, Illinois, for judgment of sale for delinquent taxes for the year 1900 and prior years, with the judgment of the court thereon, the invalidity of 13.05 per cent. of the corporate tax of said City for said year.

94 Mr. SMITH: I think we should make a further specific objection to that, that it is not in the record in this case or between any parties to this case.

Mr. JOHNSON: Now, if it be understood that in addition to all the evidence having been excluded, I offer to prove the various ordinances and the testimony figured out on Mr. Burcky's slip which has been disallowed——

Mr. SHEPARD: If your Honors please, just to have this record straight, it may be all right now, I understand the ruling of the Masters to be that the evidence sought to be introduced here upon this subject matter this morning is excluded, and the objection to the introduction of that evidence is sustained?

The MASTER: In effect that is the ruling of the Masters.

Mr. SHEPARD: And their offer to prove these various things suggested is disallowed?

Mr. SMITH: As I understand, that is not exactly it, I understand Mr. Johnson has offered in evidence what he has read here; we object to it, and the Masters sustain the objection.

The MASTER: Yes, so far as he has offered in evidence, the objection is sustained, and in so far as he has offered to prove certain things his offer is also disallowed.

Mr. CRAWFORD: Now, I ask that the Master shall refer that question to the court or direct that the evidence, the offer be returned with their reports so that the equity that is before the Master, the proposition, and rejected may be presented to the court exactly as it was presented to the Master. In other words, we have the right I assume to ask the opinion of the court, and the Masters ought to include the evidence, not simply, the objections to it; and if not, I shall ask the Masters to suspend this proceeding now and refer the matter to the court.

Mr. SHEPARD: I object to any such proceedings at this late day.

The MASTER: It will go to the court just as it has been offered.

Mr. JOHNSON: I would like to ask Mr. Burcky another question.

95 WILLIAM R. BURCKY recalled for further examination by Mr. Johnson:

Q. Mr. Burcky, do these figures of the amount extended on the warrant for the year 1900 include any tax, any item except the revenue for that year?

A. They include whatever back taxes have been brought forward from other years, and that would be an amount in the levy.

Q. So the items of back taxes would be a comparatively small one in each case?

A. I think so.

Q. And in the levy you speak of, would there be any excess?

A. In making the extension upon so many different pieces, there would be of course a fractional amount.

Q. It arises from the extension of fractions?

A. Yes, sir.

Q. These amounts which you have on here under the head of "Amount of Warrant for year 1900" those are the amounts which stand on the warrants themselves?

A. Including the back taxes brought forward.

Mr. JOHNSON: I also offer to prove by a certified copy from the County Clerk of Cook County that the exact amount of taxes on the warrant in favor of each municipality for the year 1900, not including back taxes, is as follows:

Taxes Extended for 1900.

	Dollars.	Cts.
County	2,431,021	95
City of Chicago	6,889,054	40
Chicago School	9,986,580	94
Chicago Public Library	268,291	12
Sanitary District	1,347,566	29
South Park	656,450	68
Lincoln Park (Lake View)	60,270	98
Lincoln Park (North Chicago)	160,037	76
Lake Shore Protection Fund (No. Chic.)	50,853	01
West Park	639,577	27
Boulevard and Park	29,681	81
Town Bonds	64,601	34

STATE OF ILLINOIS, *County of Cook, ss:*

96 *I*, Phipip Knopf, Clerk of the County Court of Cook County, in the State aforesaid, do hereby certify that the attached statement of the total amount of Taxes Extended on the General Warrants for the year A. D. 1900 for the several purposes mentioned is true and correct, all of which appears from the records and files in my office.

In witness whereof, I have hereunto set my hand and affixed the seal of said County Court, at my office, in the City of Chicago in said County, this 17th day of May, A. D. 1902.

(Signed) PHILIP KNOPF,
Clerk of the County Court. [SEAL.]

The MASTER: The intention of the Master was simply that counsel should offer to prove, and that that offer should be dealt with by the Master. There was a departure from that method of procedure so that you could get right along on both the offers to prove and the actual proof.

Mr. JOHNSON: The Master understands I offer to prove each one of these ordinances I have offered in evidence. Of course I don't want any of them left out on account of any misunderstanding.

The MASTER: They are all in.

Mr. CRAWFORD: We shall request the Master in his report to fully embrace the different items of evidence that were tendered and rejected, and also the offers to prove that they were rejected. I think in order to get it into the record in proper shape there should be a formal offer to prove.

Mr. SHEPARD: I think the record shows you have both offered to prove and we have objected.

Mr. CRAWFORD: Not the whole detailed proposition, which was rejected; I think we can get it in the record in proper shape.

Mr. SMITH: You might offer to prove a certain thing and when you offered your evidence it might prove an entirely different thing.

Mr. CRAWFORD: It might but it won't, so you might try us.

(Said certified copy of the objection of the Title Guarantee and Trust Company is in words and figures as follows, to-wit:)

97 UNITED STATES OF AMERICA,
State of Illinois, County of Cook, ss:

Pleas before Honorable Richard S. Farrand, County Judge of Lee County, presiding as Judge of the County Court of Cook County, at the request and in the absence of the Honorable Orrin N. Carter, sole presiding Judge of the County Court of Cook County, in the State of Illinois, at a regular term of said County Court of Cook County, begun and holden at the Court House in the City of Chicago, in said County and State, on the Second Monday, being the 8th day of July, in the year of our Lord one thousand nine hundred and one, and of the Independence of the United States of America, the one hundred and twenty-sixth.

Present: The Honorable Richard S. Farrand, Acting Judge of the County Court of Cook County. Ernest J. Magerstadt, Sheriff of Cook County.

Attest. PHILIP KNOPF, *Clerk.*

Be it remembered that heretofore, towit: On the 10th day of July, in the year of our Lord one Thousand nine hundred and one the same being one of the days of the July Term of the County Court of Cook County, the following objections were filed with the Clerk of said Court in words and figures as follows, to wit:

STATE OF ILLINOIS, *County of Cook, ss:*

In the County Court Thereof.

Objection No. —.

In the Matter of the Application of SAMUEL B. RAYMOND, County Treasurer and *ex-Officio* County Collector of Cook County, Illinois, for Judgment of Sale for Delinquent Taxes, for the Year 1900 and Prior Years.

Now comes Title Guarantee & Trust Company who is the owner of and interested in, the real property described in the Schedule hereto attached and made part hereof, by J. D. Adair and Edwin S. Philpot, his attorneys, and objects to the rendition of judgment as herein applied for against said premises, for the taxes levied thereon, for the said year, and for cause of objection alleges:

1. That the description of said premises as set forth in the
98 judgment sale, redemption and forfeiture record, and the advertised delinquent list upon which this application for judgment of sale is made, is so defective as to render the assessment thereof, for the purpose of taxation for the year 1900, null and void.

2. That said description, as set forth, is so defective as to render the levy of the taxes extended against said premises for the year 1900 null and void.

3. The said description of said lands, as set forth in the judgment sale, redemption and forfeiture record aforesaid, is on this application insufficient to sustain a judgment of sale as applied for.

4. The said description of said land, as contained in the advertised list of delinquents, is, on this application, insufficient to sustain a judgment of sale as applied for.

5. A plat of said lands purporting to have been filed for record in the recorder's office of Cook County, Illinois, as document number — in Book 164 maps, page 27, entitled Subdivision by the Assessor of South Division of Chicago of Lots 7 & 8 and E. ½ Lot 6, B. 40, Original Town of Chicago is void in this.

(*a.*) It does not particularly describe and set forth the lots or parcels of land surveyed, as required by the statute then in force.

(*b.*) The location of the lots into which said lots were subdivided is not set forth in said plat as required by the statute then in force.

(*c.*) No description of the tract or tracts, lot or lots, of land out of which said lots in said Assessor's plat were made is given in said plat, as required by the statute then in force.

(*d.*) The quantity of land in each of the lots attempted to be made by said Assessor, and particularly as to lots — is not given, as required by the statute then in force.

(*e.*) The said plat was not certified by the County Surveyor, as required by the statute then in force.

(*f.*) The said assessor was without legal authority to make said

survey and plat because said plat does not show affirmatively
99 that said Assessor included in his survey and plat only parcels of land each of which embraced less than one-sixteenth of a section, as required by the statute then in force.

(*g.*) The said plat is in other respects illegal and insufficient as a platting of said lands for the purposes of taxation.

6. The property has no legal existence for the purposes of taxation.

7. No lien for taxes can attach as against said lands as there described, because they cannot be located and found.

8. The tax levy ordinance passed by the Common Council of the City of Chicago on the 23rd of April, A. D. 1900, provides for the levying of taxes for corporate purposes for the year 1900, in excess of two per cent. (exclusive of the amount levied for the payment of bonded indebtedness and interest thereon), upon the aggregate valuation of all the property within the City of Chicago, subject to taxation therein as the same was equalized for State and County taxes for the preceding year.

9. The County Clerk extended the taxes levied for corporate purposes of the City of Chicago for the year 1900 upon the premises herein objected for, at a rate in excess of two per cent. (exclusive of the amount levied for the payment of bonded indebtedness and interest thereon), upon the aggregate valuation of all property within the City of Chicago subject to taxation therein as the same was equalized for State and County taxes for the preceding year.

10. The appropriations made by the Common Council by ordinance passed April 4, 1900, provide for the application of money to be raised under the tax levy ordinance aforesaid, to the payment of indebtedness incurred or to be incurred by the City of Chicago, in excess of five per cent. of the value of the taxable property in the City of Chicago, as ascertained by the last assessment for State and County purposes, and the taxes as levied upon the premises herein objected for were extended to include such indebtedness.

11. The Common Council by ordinance passed April 4th, 1900, appropriated money to the payment of indebtedness unlawfully incurred by the City of Chicago, for the payment of which indebtedness the City has levied, and the County Clerk extended, a tax upon the premises herein objected for.

100 12. The appropriation by the City of Chicago by ordinance passed April 4, 1900, and the tax levy based thereon, are, in respect to the appropriations of money to pay, and the levy of the tax to raise said money, to pay said indebtedness so unlawfully incurred by said City illegally appropriated, and the said taxes are illegally levied upon the premises herein objected for.

13. The appropriations by the City of Chicago by ordinance passed April 4, 1900, and the tax levy based thereon, provide for the payment of unlawful indebtedness and the unlawful use of money, in this that the appropriations were made for unpaid bills of prior years, for money not to be applied to lawful corporate purposes, for money to pay interest in excess of the interest payable upon the lawful interest bearing indebtedness of the City of Chicago, and the tax

to raise the money to pay said appropriations, was illegally levied upon the premises objected for.

14. The appropriations made by the Common Council of the City of Chicago by ordinance passed April 4th, 1900, and the tax levy based thereon, exceed the amount which could be lawfully appropriated and levied, upon the property subject to taxation in the City of Chicago, as the same was assessed and equalized for State and County purposes for the year 1900, and the said tax as levied upon the premises objected for is illegal and void.

15. The taxes levied upon the premises in question for the corporate purposes of the City of Chicago for the year 1900, are in other respects illegal and void.

16. The estimate of the amount of money required by School purposes, for the year 1900, as passed and certified by the Board of Education of the City of Chicago, to the finance Committee of the *of the* Common Council of said City, is illegal and void.

17. The appropriation ordinance passed April 4th, 1900, by the Common Council of the City of Chicago, and the levy of the Tax to raise the money to pay said appropriations, are in respect to the appropriations for the School Tax Fund, and the levy of the taxes therefor, illegal and void in this.

(*a*.) The amount appropriated for building purposes, and the tax therefor, exceed two per cent. upon all the taxable property
101 in the City of Chicago, as ascertained by the assessment for State and County taxes for the year 1900.

(*b*) The amount appropriated for educational purposes, and the tax levied therefor, exceed three per cent. upon all the taxable property in the City of Chicago, as ascertained by the assessment for State and County taxes for the year 1900.

(*c*) The amount appropriated for the School Sinking Fund, exceeds the amount necessary for said fund and lawfully authorized therefor.

(*d*) The appropriation for building purposes, contains items belonging to educational purposes, and the appropriation for educational purposes, contains items for building purposes and both are illegal and void, and the tax levied to pay the same is illegal and void.

18. The appropriations for school purposes for the year 1900 made by the Common Council of the City of Chicago, is in other respects uncertain, illegal and void.

19. The appropriations by the Common Council by ordinance passed April 4th, 1900, for the general sinking fund, are largely in excess of the amount required, and lawfully authorized by law, for that purpose.

20. The valuation of the objector's premises for taxation for the year 1900, is illegal and void.

21. The objector herein hereby offers to pay, not waiving his right to an appeal or writ of error, any part of the taxes aforesaid which may be found by the Court to have been legally assessed and levied.

TITLE GUARANTEE & TRUST COMPANY,
By J. D. ADAIR, &
E. S. PHILPOT, *Attorneys for Objector.*

Schedule of Property Objected for.

Title Guarantee & Trust Company, Objector.

The South six (6) inches of the East One hundred and eleven and one-half (111½) feet of sub-lot *Town* (2), and all of sub-lot Three (3) in Assessor's Division of the East Half of Lot Six (6) and all of Lots Seven (7) and Eight (8) in Block Forty (40) Original Town of Chicago.

102 And afterwards, to-wit, on the 7th day of August, A. D. 1901, the following among other proceedings were had by and before said court and entered of record, to-wit:

STATE OF ILLINOIS, *County of Cook, ss:*

In the County Court Thereof.

In the Matter of the Application of S. B. RAYMOND, County Treasurer and *ex-Officio* Collector of Cook County, Illinois, for Judgment of Sale for Delinquent Taxes, &c., for 1900 and prior years.

General Taxes Objection No. 75.

On this day, being one of the days of the July Term, 1901, of this Court, the objections of Title Guarantee & Trust Co. to the application for judgment of sale for delinquent taxes for the year 1900 coming on to be heard, the Court after hearing the evidence and the arguments of counsel, and being fully advised in the premises, finds that the plat entitled:

"Subdivision by the Assessor of South Division of Chicago of "Lots 7 and 8 and East half of Lot 6 Block 40 Original Town of "Chicago," recorded Sept. 19, 1866 in Book 164 of Maps page 27, offered in evidence herein does not comply with Sections 52 and 53 of the Act of Feb'y 12, 1853, nor does said plat comply with Sections 17, 18, 19 20, and 24 of the Revised Statutes of 1845.

And the Court further finds from the evidence that the objector is estopped to deny the validity of said Assessor's Plat.

And the Court further finds, that the tax levy ordinance of the City of Chicago, passed April 23rd, 1900, as to the following items is invalid.

Contingent Fund.

For contingent and other expenses, for corporate purposes not otherwise hereinafter expressly provided for, including injury claims.....	$40,000.00

Contingent Fund, Finance Committee.

For payment of petty injury and damage claims, refunds and other contingent expenses ordered, by Finance Committee.....	5,000.00

Civil Service Commission.

For payment of salaries, stationery and sundry expenses, including unpaid bills of 1897, 1898 and 1899 ..... 38,000.00

Payment of 1899 Bills.

For unpaid bills of 1899 Department of Electricity... 28,074.34

103 City Engineer's Office.

For payment of one year's salary to W. D. Hotchkiss Ass't Engineer, during period of service, May 1, 1898, to May 1, 1899, in United States Army, as per ordinance of City Council, Oct. 17, 1898, page 793 of Proceedings..... 1,620.00

For restoration and repair of streets (including unpaid bills of 1899..... 1,433.23

Public Buildings.

For unpaid bills of 1898..... 7,723.58

Seventh Third Street Pumping Station.

Horse Feed for 1899..... 1,980.00

For miscellaneous work performed for Board of Local Improvements, other departments and outside depositors. This amount to be in addition to any appropriation made for labor, teaming, material, horse hire, and all necessary expenses for sewer repair work. Payments on account actually collected from depositors and taken up as miscellaneous receipts in the general fund..... 70,000.00

Election Expenses.

For the payment of judges and clerks having served at the April, 1899, election..... 94,245.00

Fire Department.

For unpaid bills of 1899..... 18,720.13

House of Correction.

For unpaid bills of 1899..... 28,032.50

Judgment Account.

For payment of judgments and costs against the City. 50,000.00

Legal Expense.

City Attorney's unpaid bills, 1899..... 5,857.00

Department of Police.

For deficiency in miscellaneous appropriations of	1899.	53,153.75
" " " " "	1898.	20,000.00

Sundry Claims.

For payment of unpaid bills of 1898 and claims allowed by City Council for which no appropriation has been made as per schedule certified to City Comptroller by finance committee, and for payment of the claim of J. J. Sullivan, for sidewalk construction in the sum of $591.88	29,138.32

That the following item is valid.

Bridge Construction.

104	For construction of new bridges to replace those at Ninety-fifth Street, Clybourn Place, North Avenue, Division Street over Canal, Division Street over North Branch, South Western Avenue, and at Thirty-seventh Street (Bridge is to be built at an approximate cost of $200,000.00 each) of which sum only $850,000.00 shall be expended during the year 1900, $1,250,000.00	850,000.00
	Less amount of appropriation not to be expended during 1900	400,000.00

And that the item for interest in city indebtedness to the extent of $636,469.00 is valid; and as to the amount of $304,031 is invalid; and that such invalid items amount to 13.05 per cent. of said taxes levied and that the objections are sustained to the said City tax to the extent of 13.05 % thereof and overruled as to the remainder.

And the Court further finds that the levy of the City of Chicago for the tax for the year 1900 for school purposes is a valid levy, and the taxes are collectible as levied.

It is therefore ordered, adjudged and decreed by the court, that all objections based upon said Assessors' plat be and the same are hereby overruled.

That the objections to the City taxes aforesaid, be and the same are hereby sustained to the extent of 13.05 per cent. of said taxes, and overruled as to the remainder, and that all objections to the school tax aforesaid be and the same are hereby overruled.

It is further ordered that judgments of sale are hereby levied against said premises in favor of the People of the State of Illinois for all of said taxes, except said City tax, and as to said City tax judgment be and the same is hereby entered for 86 95/100 per cent thereof in favor of the People of the State of Illinois, with penalties and costs severally due hereon for the months of May, June and July, 1900.

And it is ordered by the Court that said premises, or so much thereof as shall be sufficient to satisfy the amount of taxes penalties and costs annexed to them severally *to* be sold at the law directs.

Whereupon, the objector excepted to the finding of the court and prayed an appeal from said findings to the Supreme Court of the State of Illinois, which appeal is granted upon the objector's filing a bond in the sum of $250 to be approved by the Clerk of
105 this court and bill of exceptions within 30 days, and depositing the amount of said taxes &c. as the law directs.

STATE OF ILLINOIS, *County of Cook, ss:*

I, Philip Knopf, Clerk of the County Court of Cook County in the State aforesaid, and keeper of the records and files thereof, do hereby certify that the foregoing is a true and correct copy of certain objections of Title Guarantee and Trust Company filed with the Clerk of said Court on the 10th day of July, A. D. 1901, and a certain order entered of record August 7th, A. D. 1901. In the matter of the application — Samuel B. Raymond County Treasurer and *Ex-Officio* Collector of Cook County, for Judgment of sale for Delinquent Taxes for 1900 and prior thereto Objections General No. 75 all of which appears from the records and files in my office.

In witness whereof, I have hereunto set my hand and affixed the seal of said County Court, at my office, in the City of Chicago, in said County, this 17th day of May, A. D. 1902.

PHILIP KNOPF, [SEAL.]
Clerk of the County Court.

Mr. JOHNSON: That is all I have got to offer.

(Endorsed:) Filed Jun- 9, 1902. Marshall E. Sampsell, *Clerk.*

106 And on to-wit: the nineteenth day of May, 1906, come the City of Chicago, by its solicitors and filed in the clerk's office of said Court its certain Answer in the words and figures following to-wit:

107 *Answer of City of Chicago.*

In the United States Circuit Court, Northern District of Illinois.

No. 26610.

CHICAGO CONSOLIDATED TRACTION COMPANY, Complainant,

vs.

SAMUEL B. RAYMOND, County Treasurer and *ex-Officio* County Collector of Cook County, and JULIUS SALOMON, Town Collector of the Town of North Chicago, Defendants.

Answer of the City of Chicago to the bill of complaint of the Chicago Consolidated Traction Company, complainant, filed herein, after leave of Court for that purpose first had and obtained.

This defendant, now and at all times hereafter saving and reserving unto itself all benefit and advantage of exception which can or

may be had or taken to the many errors, uncertainties and other imperfections in the said bill contained, for answer thereunto, or to so much and such parts thereof as this defendant is advised is material or necessary for it to make answer unto, answering, says:

1. This defendant admits that the complainant is a corporation, organized and existing under the laws of the State of
108 Illinois, as alleged in Complainant's bill of complaint; and that Samuel B. Raymond was at the time of the filing of the bill of complaint in this cause the County Treasurer and *ex-officio* County Collector of Cook County, and that the defendant Julius Salomon, was the Town Collector of the Town of North Chicago.

2. This defendant further answering, admits that the said defendants Raymond and Salomon are charged by law with the duties substantially as set forth in paragraph- 2 and 3 of said Bill of complaint.

4. This defendant further answering denies that such complainant or anyone for it within the time and in the manner required by law, listed for taxation in 1900 all its property subject to taxation for said year, as alleged in said bill of complaint; but this defendant states on information and belief, and from such information and belief charges the fact to be that complainant failed and refused to file the schedule required by law for that purpose, for the purpose of evading a just, proper and legal assessment of its property for the purposes of taxation for said year, and so failed and refused to discharge its duty in this regard, for the purpose of evading and defeating a proper, equitable and valid assessment for purposes of taxation of their respective property for said year. And this defendant further answering admits that the Board of Assessors and Board of Review of Cook County, made assessments of the
109 tangible property and of the real estate of complainant for the year 1900, substantially in the amount and in the manner alleged in the Fourth Paragraph of Complainant's bill of complaint.

5. And this defendant further answering states on information and belief, and from such information and belief, charges the fact to be, that on the first day of April, 1900, complainant had outstanding its bonds amounting to the face value of $5,020,000 the fair cash value of which on the first day of April, 1900, was $7,500,000, and that in addition to the value of said bonds the fair cash value of the capital stock and franchise of the complainant on April 1st, 1900, was $15,000,000.

6. This defendant, further answering states and alleges the fact to be that the State Board of Equalization in 1900 made an alleged finding of the full value of the complainant's capital stock and franchise at the sum of $1,889,065, and of an alleged assessed value of $377,813, and deducted from said alleged assessed value the assessed value of the complainant's tangible property as returned by the local assessors, of $277,813, leaving an alleged net assessment of the capital stock and franchise of the complainant, of

$100,000, which the said Board fraudulently, in conjunction with complainant, set down as the assessed value of complainant's capital stock and franchise over and above the assessment of its
110 tangible property by the local assessors, which said alleged and fraudulent assessment was certified to the County Clerk of Cook County. This defendant further answering admits that the County Clerk thereafter extended the same upon the Collector's warrant, together with the taxes based thereon, and delivered the said warrant for collection to the said Collector; that thereafter complainant voluntarily paid the said taxes so extended amounting to $8,817; but denies that such payment fully discharged the said complainant from payment of all of the General Taxes of said year 1900. This defendant further states and alleges the fact to be, notwithstanding the fair cash value of complainant's capital stock and franchise as heretofore alleged, the State Board of Equalization, in total disregard of its duty as required by law, wilfully and fraudulently found the full value of complainant's capital stock and franchise as above set forth, and set down the assessment of the same, over and above the assessment of its tangible property by the local assessors as above set forth, which said fraudulent and illegal action on the part of the said State Board of Equalization, in reference to the valuation and assessment of the complainant's property, was had by and with the concurrent fraudulent action of complainant itself, in its failure to properly list and schedule its property for the purposes of taxation, and to
111 furnish the statements therefor required by law, and its fraudulent representations to the said State Board. The defendant further alleges and states the fact to be that the said alleged assessment was and has been long prior to the filing of the bill of complaint in this cause held and declared by the Circuit Court of Sangamon County, and by the Supreme Court of the State of Illinois, not to have been made in accordance with the laws of the State of Illinois, and to be null and void, and that a reassessment of the capital stock of said complainant, over and above the assessed value of its tangible property, was ordered by said Circuit Court of Sangamon County. But this defendant, further answering, denies that in making said new assessment, which was made in pursuance to said mandate, the members of the said Board did not exercise their independent judgment and discretion in arriving at a valuation of the properties ordered to be assessed; but this defendant states and alleges the fact to be that after a full and fair consideration of all of the matters and things joined by said writ of mandamus, and after a full and fair consideration of all of the matters and things proper to be considered by them, under their own rules, which were then and for a great many years had been in force, and after a full consideration of the independent knowledge and consideration of the members of said Board, that said Board made the said new assessments of property as hereinafter more particularly set forth. And this de-
112 fendant further answering denies that under the Revenue laws of the State of Illinois, that the State Board of Equali-

zation was authorized to adopt such rules and principles to ascertain the fair cash value of the capital stock of the corporation, including franchises, as might seem to them equitable and just, except such rules as shall be in conformity to and consistent with the laws of the State of Illinois. But this defendant, further answering, denies that at its September session in 1900 it adopted any rules and principles governing the assessments of capital stocks of corporations subject to assessment by it not inconsistent with the laws of the State of Illinois, but this defendant states and alleges the fact to be that the said Board, at its said session did adopt certain pretended rules which have been held to be inconsistent with and repugnant to the laws of the State of Illinois by the Supreme Court of the State of Illinois, in direct proceedings against said State Board of Equalization, wherein the validity of said rules was directly put in issue.

7. And this defendant further answering states and alleges the fact to be that in the year 1872 the State Board of Equalization did adopt certain rules for the government of said Board in reference to the assessment of capital stock and franchises of corporations subject to assessment by said Board, and that in 1899 the said Board
113 re-enacted said rules with certain changes, retaining therein however the material facts applicable to the assessment of the property of complainant and other corporations. And this defendant further states and alleges the fact to be that the said rules were, in all respects, consistent with and in conformity to the Constitution and laws of the State of Illinois, and the Constitution of the United States; and that the said rules were in force at the time of the supposed assessment made against the complainant in the year 1900, and were then disregarded by said Board, and that said rules were in full force and effect at the time of making the new assessment against the said capital stock and franchise of the said complainant in said Complainant's bill of complaint referred to. And this defendant further answering states and alleges the fact to be that in making the said subsequent assessment, said State Board of Equalization, in all matters, strictly conformed to the said rules in ascertaining the full, fair, cash value of the complainant's capital stock and franchise.

8. This defendant further answering, denies that the alleged assessment made in 1900 upon the capital stock and franchise of the complainant was higher in proportion than the assessment of other property in the State, or that complainant was discriminated against in favor of other persons and corporations, as alleged in said bill; but states and alleges the fact to be that in making said al-
114 leged assessment the said State Board of Equalization purposely and intentionally made so gross an undervaluation that the same in and was so low and inequitable as to be in effect and in fact no assessment, and that said alleged assessment was not the result of the exercise of the lawful judgment and discretion of said Board, but was intentionally made with the coöperation of complainant, and in violation of law, and the lawful rules of said Board in that regard, with the intent that said property should be assessed on so low a valuation, that it would bear only a small proportion

of the general taxes which otherwise, on a just and equitable basis, corresponding with other taxable property in the State, it would and ought to bear. And this defendant further answering denies that the valuation placed upon the general property of the State of Illinois for the year 1900, consisting of lands, improvements, city and town lots, and improvements of personal property, was based in fact upon an average valuation, not equal to sixty per cent. of the real fair cash value of such property; and states and alleges the fact to be that the assessment on said last described property for the year 1900 was, by the different assessing tribunals of the state, intended to be made, and was in fact made, upon a basis of the full fair cash value of the same. And this defendant further answering, denies that the property of any of the persons or corporations men-
115 tioned in the bill of complaint was omitted or exempted from assessment for the purposes of taxation as alleged in said bill of complaint.

9. This defendant further answering denies that the said State Board of Equalization had no power or authority to make a finding of full value and assessment of the capital stock and franchise of complainant over and above the assessed value of its tangible property, at its session in 1901, for the year 1900, but states and alleges the fact to be that it became and was the duty of the said State Board of Equalization to make a finding of full value of the capital stock and franchise of complainant, and an assessment thereof in excess of the assessed value of its tangible property, as made by the local assessors at its session in 1901, for the year 1900; and denies that the action of the said State Board in 1901, and the finding of the full value and assessment made upon the capital stock and franchise of the complainant for the year 1900 was without notice to the complainant, but states and alleges the fact to be that the action of the said State Board in 1901 in the matter of the assessment in the bill of complaint complained of was had with the full knowledge of the complainant.

10. This defendant further answering denies that the judgment and writ of the Sangamon County Circuit Court are illegal and void on their face, or that they required the said State Board to
116 assess the fair cash value of the capital stock and the franchise of the complainant, and deduct therefrom one fifth of the fair cash value of their taxable property instead of the full value thereof, or that the said judgment and writ subjected complainant to double or unequal taxation, and alleges and denies that the judgment and writ required the said State Board to unconstitutionally assess complainant, as alleged.

11. This defendant further answering, admits that the State Board of Equalization found the full value of the capital stock and franchise of complainant and assessed the same in the amount, substantially as set forth in the copy of Schedule B, on page 16 in Complainant's bill of complaint; but denies that the said findings and full value of assessment made by the State Board or either of them, were made by a committee of said State Board by a minority of which, or without due consideration of the facts in reference thereto, or with-

out notice to complainant, or that the action of the said State Board in making the said valuation and assessment was arbitrary, and not based upon any principle, rule or independent valuation, as alleged. But this defendant states and alleges the fact to be that such State Board of Equalization, in accordance with its duty, and in compliance with the finding of the said Sangamon County Circuit Court,
117 duly considered as required by law the fair cash value of the capital stock and franchise of complainant, and after consideration of all the facts and information before it in reference to the fair cash value of the capital stock and franchise of complainant, obtained by the said Board from complainant, and from various sources, including quotations of the sale of the stock of complainant, and after consideration of its own knowledge of the subject matter, found the full value of the capital stock and franchise of the Complainant to be the sum of $12,000,000, and the assessed value of the same to be the sum of $2,400,000; and after deducting therefrom the assessed value of its tangible property, assessed by the local assessors at the sum of $277,813, as the assessed value, made a net assessment of the capital stock and franchise of the said Complainant of $2122,187, which said assessment so made was thereafter certified to the County Clerk of Cook County and by him extended on the Collector's warrant, together with the taxes due thereon, and the warrant placed in the hands of the collector for the collection of the taxes so extended against said assessment.

12. This defendant further answering denies that the State Board of Equalization included in its assessment of the capital stock and franchise of the complainant the capital stock and franchise of any of the property of any other person or corporation, and denies that
118 by the valuation and assessment of each of the eight constituent corporations of complainant that the said State Board of Equalization excessively or doubly assessed the property of the complainant or of any other person or corporation; but this defendant states and alleges the fact to be that each of the other of said eight corporations were on April 1, 1900, and still are, corporations organized and existing under and by virtue of the laws of the State of Illinois, each with capital stock authorized, issued and fully paid, and each on said first day of April, 1900, exercising and owning valuable franchises and other property, all of which are required to be assessed, and were subject to assessment for the purpose of taxation, by the said State Board of Equalization, but that the said State Board of Equalization found the full fair cash value and the assessed value thereof as herein above set forth, and this defendant denies that the said assessments so made and returned by the said State Board, or any or either of them were excessive, unequal or illegal, but states and alleges the fact to be that the fair cash value of the capital stock and franchises of the said eight corporations on the first day of April, 1900, and subject to assessment by said State Board of Equalization, at its session in 1901, was in excess of the sums hereinafter specified, namely:

	The Chicago Electric Transit Company.....	$1,950,000
119	Chicago Jefferson Urban Transit Company.....	513,000
	Cicero & Proviso Railway Company.....	3,518,000
	Evanston Electric Railway Company.....	300,000
	North Chicago Electric Railway Company.....	1,613,000
	North Side Electric Railway Company.....	383,000
	Ogden Street Railway Company.....	1,416,000
	Chicago North Shore Street Railway Company.....	2,050,000

This defendant further answering says that the local assessor did not assess any of the tangible or other property of either of the eight above named corporations in 1900, or thereafter, and no assessment of the property of either of the above named eight corporations was made by any assessing tribunals, except the said assessments as above set out made by the said State Board of Equalization, and that the said valuations and assessments, as made and returned by said State Board of Equalization upon and against each of the above named corporations for the year 1900, and the taxes extended thereon were proper, equitable and legal. This defendant further answering denies that the State Board of Equalization in its valuation and assessment of the capital stock and franchises of the complainant, over and above the assessed value of tangible property in 1901, for the year 1900, included any stocks of any Illinois Corporation owned by complainant, or that it included any property in such valuation and assessment not subject to valuation and assess-
120 ment by the said State Board, and denies that the complainant is subjected to an assessment upon its property of $19,040,000, and denies that the Complainant or either of the other of said eight corporations are out of proportion, or upon any other or different basis than other corporations in the State of Illinois. This defendant further answering says that the matters involved in this proceeding do not arise under the constitution or laws of the United States, as alleged by complainant.

This defendant further answering says that it is a municipal corporation duly organized and existing under and by virtue of the laws of the State of Illinois, and that under and by virtue of the laws of the State of Illinois, it will be the duty of the County Collector and the County Treasurer of Cook County, Illinois, to pay over to this defendant as its share of the taxes so due and owing from the complainant in this cause, the sum of $242,467.57, and therefore this defendant shows that it is in equity the owner of and entitled to receive the said sum of $242,467.47, out of the taxes now in controversy in this cause.

And this defendant, further answering says that as to the allegations in said bill of complaint contained not herein specifically answered, admitted or denied, is that this defendant neither admits nor denies the same, but demands strict proof thereof. And this
121 defendant further answering denies that the complainant is entitled to the relief or any part thereof in said bill of complaint demanded, and prays the same advantage of this answer as if it had pleaded or demurred to the same, and prays to be henceforth

dismissed with its reasonable costs and charges in this behalf most wrongfully sustained.

CITY OF CHICAGO,
By DAVID K. TONE, *Special Counsel.*
JAMES HAMILTON LEWIS,
Corporation Counsel.

(Endorsed:) Filed May 19, 1906. Marshall E. Sampsell, Clerk.

122 And on to-wit: the twenty-fifth day of July, being one of the days of the regular July term of said Court, 1906, in the record of proceedings thereof in said entitled cause before the Hon. Peter S. Grosscup, Circuit Judge, appears the following entry, to-wit:

123 *Decree of July 25, 1906.*

In the Circuit Court of the United States, Northern District of Illinois, Eastern Division.

26610.

CHICAGO CONSOLIDATED TRACTION COMPANY
vs.
SAMUEL B. RAYMOND ET AL.

This cause came on to be heard further at this term, and was argued by counsel, and thereupon upon consideration thereof,

It is ordered that all objections and exceptions to the Master's Reports be and the same are hereby over-ruled, and that the Master's Reports and each of them be and they are hereby approved and confirmed; and the Court finds that all of the material allegations of the bill of complaint are sustained by the evidence and that the equities of the case are with the complainant; and thereupon the court doth order, adjudge and decree as follows:

That the assessment made by the State Board of Equalization of the State of Illinois at its session in 1901, against the complainant, the Chicago Consolidated Traction Company upon its capital

124 stock for the year 1900, amounting to..... $2,122,187.
and upon the capital stock of the Chicago Electric Transit Company amounting to..... 234,400.
and upon the capital stock of the Chicago and Jefferson Urban Transit Company amounting to..... 61,600.
and upon the capital stock of the Cicero and Proviso Street Railway Company amounting to..... 422,200.
and upon the capital stock of the Evanston Electric Railway Company amounting to..... 36,000.
and upon the capital stock of the North Chicago Electric Railway Company amounting to..... 193,600
and upon the capital stock of the North Side Electric Street Railway Company amounting to..... 46,000.
and upon the capital stock of the Ogden Street Railway Company amounting to..... 170,000
and upon the capital stock of the Chicago North Shore Street Railway Company amounting to..... 245,500

such assessments in the aggregate amounting to..... $3,531,487,

was made under the coercion and influence of a writ of mandamus issued by the Circuit Court of Sangamon County in the State of Illinois and did not represent the real and independent judgment of the State Board of Equalization, and that the assessments made by the State Board of Equalization at its meeting held in 1901 upon the capital stock of said complainant, and upon the capital stock of the said corporations hereinabove referred to (being grantor and lessor corporations of said Chicago Consolidated Traction Company),
and upon the capital stock of the other corporations named
125 in the writ of mandamus above mentioned, for the year 1900,
were in fact made upon a materially different basis from that upon which the capital stock of all other corporations of the same class were assessed by the State Board of Equalization for the year 1900, and also upon a basis materially different from that upon which other taxable property in the State of Illinois was assessed for the year 1900; that said assessment made in 1901 on the capital stock of the complainant and its aforesaid grantor and lessor corporations was made under the coercion and influence of said writ of mandamus without the exercise or application of the judgment of the State Board of Equalization or the members thereof to the ascertainment of the value of said capital stock, and without the State Board of Equalization, either in fact or in form, taking into consideration the basis upon which all other taxable property in the State of Illinois was assessed and taxed for the year 1900, and without in fact or in form equalizing the value or assessment of the capital stock of the said complainant for the year 1900 with all or any of the assessments made upon the other taxable property in the State of Illinois for the year 1900, with the result that the said assessment on the capital stock of complainant and upon that of its aforesaid grantor and lessor corporations made in the year 1901 for the year 1900, was made on a much higher basis than that upon which the other taxable property of the State of Illinois was assessed and taxed for the
year 1900; and that such assessment upon said capital stock
126 for the year 1900 was and is unjust and inequitable; that
the making of such assessment as aforesaid in 1901 upon the capital stock of the said complainant and upon that of its aforesaid grantor and lessor corporations and the extension of the taxes thereon and the attempt to enforce the payment of the taxes so extended from complainant and from its aforesaid grantor and lessor corporations, was and is a violation of the Fourteenth Amendment to the Constitution of the United States, and that the attempt to enforce the collection from said complainant and from its aforesaid grantor and lessor corporations of the taxes extended on said reassessment will, unless restrained, result in a multiplicity of suits.

The Court further finds that the said complainant, the said Chicago Consolidated Traction Company, has heretofore paid to the County Treasurer of Cook County the capital stock tax originally assessed by the State Board of Equalization for the year 1900, being the amount of $8,817.00, which is found and decreed by the Court to be all that complainant should equitable be required to pay as a

capital stock tax for the year 1900 both for itself and for its grantor and lessor corporations.

It is therefore further ordered, adjudged and decreed that the said assessment of $3,531,487. on the capital stock of the complainant and on the capital stock of the aforesaid grantor and lessor corporations of complainant made by the State Board of Equalization in the year 1901 for the year 1900 and the taxes levied and extended thereon and now spread upon the books of the tax collection
127 agency of the County of Cook and State of Illinois for collection, be and they are and each of them is illegal, null and void, and that the defendants, Julius Salomon, Town Collector of the Town of North Chicago, and his successor and successors in office as such collector, and Samuel B. Raymond, County Treasurer of Cook County, Illinois, and *ex-officio* County Collector of said County, his successor and successors in office as such County Treasurer and *ex-officio* County Collector, and the defendant the City of Chicago, and each of them, and each and every of their respective agents, deputies, servants, attorneys and representatives be and they are and each of them is hereby perpetually enjoined and restrained from in any wise levying, or collecting or in any manner attempting, directly or indirectly, to levy or collect or to enforce against the complainant, or against any of its property, or against the aforesaid grantor and lessor corporations of the complainant, or against any of their property or the property of either of them, said tax or taxes, or any or either of them or any part thereof.

It is further Ordered that the costs be paid by complainant.

128 And on to-wit: the tenth day of August, being one of the days of the regular July term of said Court, 1906, in the record of proceedings thereof in said entitled cause before the Hon. Peter S. Grosscup, Circuit Judge, appears as of July twenty-fifth, 1906, the following entry to-wit:

129 *Order of August* 10, 1906.

Entered as of July 25, 1906.

In the Circuit Court of the United States, Northern District of Illinois, Eastern Division.

No. 26610.

CHICAGO CONSOLIDATED TRACTION COMPANY
vs.
SAMUEL B. RAYMOND ET AL.

This cause this day coming on to be heard, after due notice to all the parties to this cause; and it appearing to the court that Julius Salomon, Town Collector of the Town of North Chicago, had died prior to the entry of the final decree in this cause; and it also ap-

pearing to the court that prior thereto, the term of office of Samuel B. Raymond as County Collector had expired, and that John J. Hanberg had been duly elected and qualified as his successor in office; and it appearing that prior to the entry of the final decree herein, said John J. Hanberg, as successor in office of said Samuel B. Raymond had entered his appearance in this cause and was made a party defendant, and had adopted all the pleadings and proceedings of the other defendants to this cause and agreed not to introduce any new evidence.

Now it is hereby ordered that the final decree herein entered on the 25th day of July, 1906, be amended by striking out after the words "null and void" in the 4th line on Page 5 of said decree, the following language:—"And the defendants, Julius Salomon, Town Collector of the Town of North Chicago and his successor and successors in office as such Collector", and by inserting after the words "City of Chicago" in the 10th line on Page 5 of said decree,
130 the following language:—"And John J. Hanberg, successor in office to the said Samuel B. Raymond, as said County Treasurer of Cook County, Illinois, and *ex-officio* County Collector of Cook County, Illinois, and *ex-officio* Town Collector of the various Towns within the City of Chicago, and his successor and successors in office", this order entered *nunc pro tunc* as of July 25th, 1906.

131 And on to-wit: the tenth day of August, 1906, there was filed in the clerk's office of said Court in said entitled cause a certain Certificate in words and figures following to-wit:

Certificate.

In the Circuit Court of the United States, Northern District of Illinois.

No. 26610.

CHICAGO CONSOLIDATED TRACTION COMPANY, Complainant,
vs.
SAMUEL RAYMOND, County Collector, ET AL., Defendants.

Be it remembered that on the final hearing of the above entitled cause, before his Honor Judge Grosscup, on the 5th day of June, 1906, counsel for the City of Chicago made and insisted upon before the Court each and every objection in reference to the admission and exclusion of evidence made by the defendants or any of them before the Master, as shown in the various Masters reports now on file in this cause, and said objections and each of the- were overruled by the Court, to which rulings and to each of them counsel for the City of Chicago excepted; and counsel for the City of Chicago also objected to the Court hearing or considering any oral evidence for the purpose of explaining, varying or contradicting the official acts, records and proceedings of the said Board of Equalization of the

State of Illinois for the year 1900 and 1901 in reference to the capital stock assessment levied by the State Board of Equalization of the State of Illinois against the complainant in the year 1901 as and for the year 1900.

132 Said objection was overruled by the Court, to which ruling counsel for the City of Chicago excepted; the court basing its decree not upon the findings of fact by the Master but upon the evidence contained in the Master's report.

P. S. GROSSCUP.

(Endorsed:) Filed Aug. 10, 1906. Marshall E. Sampsell, Clerk.

133 And on to-wit: the tenth day of August, 1906, came the defendants in said entitled cause by their solicitors and filed in the clerk's office of said Court their certain Petition for Appeal in words and figures following to-wit—

134 In the Circuit Court of the United States, Northern District of Illinois, Eastern Division.

No. 26610.

CHICAGO CONSOLIDATED TRACTION COMPANY, Complainant,

vs.

SAMUEL B. RAYMOND, County Treasurer of Cook County, Illinois, and *ex-officio* County Collector, Cook County, Illinois, and JOHN J. HANBERG, His Successor as County Treasurer of Cook County, Illinois, and *ex-officio* County Collector of Cook County, Illinois, and *ex-officio* Town Collector of the Town of North Chicago, and THE CITY OF CHICAGO, Defendants.

Petition for Appeal.

The above named defendants, Samuel B. Raymond, County Treasurer, Cook County, Illinois, and *ex-officio* County Collector, Cook County, Illinois, and John J. Hanberg, his successor as County Treasurer of Cook County, Illinois, and *ex-officio* County Collector of Cook County, Illinois, and *ex-officio* Town Collector of the Town of North Chicago and the City of Chicago, and each of them, believing themselves to be aggrieved by the order and decree of this Court, made and entered on the 25th day of July, A. D. 1906, whereby the said defendants and each of them and each and

135 every of the officers, agents and employés of the said defendants are perpetually enjoined and restrained from in any wise levying or collecting or in any manner attempting to levy or collect or to enforce against the complainant the taxes or any or either of them made and levied by the State Board of Equalization in the year 1901 for the year 1900, said taxes amounting to the sum of $3,531,487—all of which appears of record in this Court and which decree is more fully set forth in the records in this cause, and

the said above named defendants hereby jointly and severally pray an appeal from said order and decree to the Supreme Court of the United States.

HARRY A. LEWIS,
WILLIAM F. STRUCKMAN,
JAMES HAMILTON LEWIS, &
DAVID K. TONE,
Solicitors for the Above Named Defendants.

The above appeal is allowed, and the appeal bond is fixed at $200, said bond to be approved by the Clerk of this Court.

P. S. GROSSCUP.

(Endorsed:) Filed August 10, 1906, Marshall E. Sampsell, Clerk.

136 And on to-wit: the tenth day of August, 1906, came the defendants in said entitled cause by their solicitors and filed in the clerk's office of said Court their certain Assignment of Errors in words and figures following to-wit:

137 In the Circuit Court of the United States, Northern District of Illinois, Eastern Division.

No. 26610.

CHICAGO CONSOLIDATED TRACTION COMPANY, Complainant,
vs.
SAMUEL B. RAYMOND, County Treasurer of Cook County, Illinois, and *ex-officio* County Collector of Cook County, Illinois, and JOHN J. HANBERG, His Successor as County Treasurer of Cook County, Illinois, and *ex-officio* County Collector of Cook County, Illinois, and *ex-officio* Town Collector of the Town of North Chicago, and THE CITY OF CHICAGO, Defendants.

Assignment of Errors.

The above named defendants, Samuel B. Raymond, County Treasurer of Cook County, Illinois, and *ex-officio* County Collector of Cook County, Illinois, and John J. Hanberg, his successor as County Treasurer of Cook County, Illinois, and *ex-officio* County Collector of Cook County, Illinois, and *ex-officio* Town Collector of the Town of North Chicago, and The City of Chicago, jointly and each of them separately and severally show that in the record and proceedings in the above entitled cause, and in the decree made herein July 25th, 1906, manifest error has occurred, to the prejudice of these defendants, and each of them, especially in the following particulars:

First. The said Circuit Court erred in failing and refusing to dismiss this cause for want of jurisdiction in a Federal Court, appearing upon the face of complainant's bill of complaint.

Second. The said Circuit Court erred in failing to dismiss com-

plainant's bill of complaint for want of jurisdiction, because the undisputed evidence in this record shows that a circuit Court of the United States is without Jurisdiction to hear and determine the matters and things charged in complainant's bill.

Third. The said Circuit Court erred in refusing to hold that the allegations of the complainant's bill of complaint show that complainant has not been denied by the State of Illinois or its officers, any right, privilege or immunity guaranteed to the complainant by the Fourteenth Amendment to the Constitution of the United States.

138 Fourth. The said Circuit Court erred in refusing to hold that the allegations of complainant's bill of complaint show that the complainant has not been deprived of its property without due process of law, in violation of the Constitution of the United States.

Fifth. The said Circuit Court erred in refusing to hold that the State of Illinois had not denied to the complainant the equal protection of its laws within its jurisdiction.

Sixth. The said Circuit Court erred in refusing to find that the sole grievance complained of in complainant's bill of complaint is that the officers of the State of Illinois charged with the duty of making a fair and equal assessment of the complainant's capital stock, have made an assessment that is unfair and unequal, contrary to and in violation of the Constitution and the Laws of the State of Illinois; and said Circuit Court likewise erred in assuming and retaining jurisdiction of this cause, when, upon the face of complainant's bill of complaint, it appears that the said Circuit Court was without jurisdiction.

Seventh. The said Circuit Court erred in refusing to hold that inasmuch as the complainants and defendants were all citizens of and residents of the State of Illinois, a Federal Court had no jurisdiction in this cause to hear and determine the fairness, equality or irregularity of the assessment made against the complainant and its said lessor corporations, and the said Circuit Court erred in refusing to dismiss this cause for want of jurisdiction.

139 Eighth. The said Circuit Court erred in entering upon a calculation as to the amount of taxes to be paid by the complainant and its said lessor corporations upon its capital stock for the year 1900 and in finding and determining the amount of said taxes, for said Circuit Court should have held that the determination as to the amount of taxes to be paid by all persons within the State of Illinois was a matter exclusively committed by the laws of Illinois to the assessing officers of the State of Illinois.

Ninth. The said Circuit Court erred in overruling the objections and exceptions and each and every of said objections and each and every of said exceptions to the said Masters' Reports and to each of them.

Tenth. The said Circuit Court erred in approving and confirming the Masters' reports and each of them, filed in this cause.

Eleventh. The said Circuit Court erred in failing and refusing to

sustain the objections and each and every of the same filed by the defendants to said Masters' reports and to each of said reports.

Twelfth. The said Circuit Court erred in finding that all of the material allegations of the bill of complaint are sustained by the evidence and likewise in finding that the equities of the case are with the complainant.

Thirteenth. The said Circuit Court erred in failing to find that the material allegations of the bill of complaint in this cause have not been proved by any competent evidence.

140 Fourteenth. The said Circuit Court erred in finding that the assessment made by the State Board of Equalization of the State of Illinois at its session in 1901 against the complainant, the Chicago Consolidated Traction Company upon its capital stock for the year 1900, amounting to $2,122,187, and upon the capital stock of the Chicago Electric Transit Company, amounting to $234,400, and upon the capital stock of the Chicago and Jefferson Urban Transit Company, amounting to $61,600, and upon the capital stock of the Cicero and Proviso Street Railway Company amounting to $422,200, and upon the capital stock of the Evanston Electric Railway Company, amounting to $36,000, and upon the capital stock of the North Chicago Electric Railway Company amounting to $193,600, and upon the capital stock of the North Side Electric Street Railway Company, amounting to $46,000, and upon the capital stock of the Ogden Street Railway Company, amounting to $170,000, and upon the capital stock of the Chicago North Shore Street Railway Company, amounting to $245,500, such assessments in the aggregate amounting to $3,531,487, was made under the coercion and influence of a writ of mandamus, issued by the Circuit Court of Sangamon County, in the State of Illinois, and did not represent the real and independent judgment of the said Board of Equalization.

Fifteenth. The said Circuit Court erred in failing and refusing to find that the assessment, amounting in the aggregate to $3,531,487, made by the State Board of Equalization of the State of Illinois at its session in 1901 against the complainant, the Chicago Consolidated Traction Company, upon its capital stock for the year 1900 and upon the capital stock of the grantor and lessor corporations of

141 said Chicago Consolidated Traction Company, named in said decree, also for the year 1900, were each and every of them made by the said State Board of Equalization in the exercise of its own judgment and upon its official responsibility.

Sixteenth. The said Circuit Court erred in finding that the assessments made by the State Board of Equalization at its meeting, held in 1901, upon the capital stock of said complainant and upon the capital stock of the grantor and lessor corporations of said Chicago Consolidated Traction Company, and upon the capital stock of the other corporations, for the year 1900, named in the Writ of mandamus, issuing from the Circuit Court of Sangamon County, Illinois, were in fact made upon a materially different basis from that upon which the capital stock of all other corporations of the same class were assessed by the State Board of Equalization for the year

1900, and also upon a basis materially different from that upon which order taxable property in the State of Illinois was assessed for the year 1900.

Seventeenth. The said Circuit Court erred in refusing and failing to find that the only competent evidence contained in the record in this cause showed that the assessments made by the State Board of Equalization at its meeting held in 1901 upon the capital stock of said complainant and upon the capital stock of the grantor and lessor corporations of said Chicago Consolidated Traction Company, in said decree mentioned, and upon the capital stock of the other corporations for the year 1900, named in the writ of mandamus issuing from the Circuit Court of Sangamon County, Illinois, were in fact made upon the same or a similar basis as that upon which the capital stock of all other corporations of the same class were assessed by the
142 State Board of Equalization for the year 1900, and also that said assessments as to each of said corporations were made upon the same or a similar basis upon which all other taxable property in the State of Illinois was assessed for the year 1900.

Eighteenth. The said Circuit Court erred in finding that said assessment made in 1901 on the capital stock of complainant and its grantor and lessor corporations, named in said decree, was made under the coercion and influence of a writ of mandamus, issuing from the Circuit Court of Sangamon County, Illinois, without the exercise or application of the judgment of the State Board of Equalization or the members thereof, to the ascertainment of the value of said capital stock and without the State Board of Equalization, either in fact or in form, taking into consideration, the basis upon which all other taxable property in the State of Illinois was assessed and taxed for the year 1900 and without in fact or in form equalizing the value or assessment of the capital stock of said complainant for the year 1900 with all or any of the assessments made upon the other taxable property in the State of Illinois for the year 1900, with the result that said assessment made on the capital stock of the complainant and upon that of its aforesaid grantor and lessor corporations, made in the year 1901 for the year 1900, was made on a much higher basis than that upon which the other taxable property of the State of Illinois was assessed and taxed for the year 1900.

Nineteenth. The said Circuit Court erred in refusing and failing to find that the assessments made in the year 1901 on the capital stock of the complainant and its grantor and lessor corporations, named in said decree, were made without any co-cion and in
143 the exercise of the independent judgment of the State Board of Equalization and the members thereof, for the purpose of ascertaining the fair value of the capital stock of said corporations and each of them, and that said assessment was obtained and resulted from the said State Board of Equalization equalizing the value and assessment of the capital stock of said complainant and its grantor and lessor corporations for the year 1900 with all of the assessments made upon other taxable property in the State of Illinois, and that the assessment so arrived at was just and fair to the said complainant and its lessor corporations.

Twentieth. The said Circuit Court erred in finding that the making of the assessment for the year 1900 upon the capital stock of said complainant and upon that of its grantor and lessor corporations, named in said decree, and the extension of the taxes thereon, and the attempt to enforce the payment of the taxes so extended from complainant and from its aforesaid grantor and lessor corporations was and is a violation of the Fourteenth Amendment to the Constitution of the United States.

Twenty-first. The said Circuit Court erred in finding that the amount of taxes heretofore paid by the complainant to the County Treasurer of Cook County on the capital stock originally assessed by the State Board of Equalization for the year 1900, being the sum of $8,817 is all that complainant should equitably be required to pay as a capital stock tax for the year 1900, both for itself and for its grantor and lessor corporations.

144 Twenty-second. The said Circuit Court erred in not finding and decreeing, if said Circuit Court had jurisdiction of this cause, that the complainant should equitably be required to pay the entire assessment levied against the complainant and its grantor and lessor corporations for the year 1900 by the State Board of Equalization in the year 1901, amounting to the sum of $3,531,487.

Twenty-third. The said Circuit Court erred in ordering, adjudging and decreeing that the assessment of $3,531,487 on the capital stock of the complainant and on the capital stock of the aforesaid grantor and lessor corporations of complainant, made by the State Board of Equalization in the year 1901 for the year 1900 and the taxes levied and extended thereon and now spread upon the books of the tax collection agency of the County of Cook and State of Illinois for collection, are, and each of them is, illegal, null and void, and that the defendants Samuel B. Raymond County Treasurer of Cook County Illinois, and *ex-officio* County Collector of Cook County Illinois, and Town Collector of the Town of North Chicago, and John J. Hanberg, his successor as County Treasurer of Cook County, Illinois, and *ex-officio* County Collector of said County and *ex-officio* Town Collector of the Town of North Chicago, in said County, and his successor and successors in office as such County Treasurer and *ex-officio* County Collector and *ex-officio* Town Collector of the Town of North Chicago, and the defendant, the City of Chicago, and each of them, and each and every of their respective agents, deputies, servants, attorneys and representatives be and are perpetually enjoined and restrained from in anywise levying or collecting or in any manner attempting, directly or indirectly, to levy or collect or to enforce against the complainant, or against any of its property, or against the aforesaid grantor and lessor corporations of the complainant, or against any of their property, or the property of either of them, said tax or taxes, or any or either of them of any part thereof.

145 Twenty-four. The said Circuit Court erred in admitting and receiving in evidence over the objection and exception of defendants' counsel, the following testimony of Samuel M. Barnes,

a member of the State Board of Equalization, of the State of Illinois for the years 1900 and 1901:—

I heard the members of the State Board of Equalization discuss the remarks of the court on the application for an extension of time to make return to the writ of mandamus. My recollection of one remark that I heard was that it was a mere question of the Board's getting their pencils and getting to work and they ought to do it. I heard one of the Board say that the court was very vituperative in this matter. I think it was either Mr. Schaefer or Mr. Hopkins of the Committee on the Board who was over there listening to the court. The impression I got was very strongly fixed in my mind and it was that his attitude was intensely hostile to the Board and I was told by those who heard him that it was in the shape of a roast from start to finish as far as his manner was concerned. Of course, I cannot just quote the language he used, but rather his manner I was told was vituperative, absolutely so. I was told this by members of the State Board of Equalization who were present and heard the remarks of the Judge. The reassessment as we determined it, was made with a view to satisfying the court, the order of the court. We made no deduction, if I remember rightly, on account of that all of these Companies but two had in 1900 been assessed upon their capital stock. We did not take into consideration the fact, if it was a fact that other property in the State had not been assessed at the maximum more than 70 per cent. of its value. The court, in his discussion, gave an illustration of the manner in which the assessment should be made and I think he made an example of the Gas Company here; in any event one of the companies he made an example of that and in that example he said
146 just how the assessment should be made and as this was an order of the court, we followed that example that he gave in a general way, for all these assessments. Mr. Smith and Mr. Greenacre furnished these tables (referring to complainant's Exhibit A, 10/23/03) said document being a compilation of the value of the capital stock of said Companies, prepared by Miss Goggin and Miss Haley, as members of the Teachers' Federation. Our desire in making this reassessment was in order to satisfy the Circuit Court of Sangamon County, because it was not my judgment that it was a proper assessment. The general idea seemed to be with the committee on capital stock that the action of the committee was dictated by the court. It was discussed between the committee on capital stock at about the time the reassessment was reported to the Board and the first object to be attained was to satisfy the court. The assessments that were made subsequent to this assessment of 1900 were based on what we believed to be the law and in a general way on the judgment of the members, that is on the real values. The assessment for 1901 we regarded as representing our real judgment and the other we did to satisfy the court. The restraining order issued by the court was dissolved on the 22nd of November and I think it was a very short time after that on that day that we made our return to the writ.

Twenty-five. The said Circuit Court erred in admitting and re-

ceiving in evidence, over the objection and exception of defendants' counsel, the following testimony of Frank P. Martin, a member of the State Board of Equalization of the State of Illinois for the years 1900 and 1901:—

I remember making the reassessment on or about the 22nd day of November, when a writ of mandamus issued from the Circuit Court of Sangamon County, early in November, and that an application was made to the Circuit Court of Sangamon County for an extension of time within which to make the reassessment, and it was denied. I have read in the examination of Dr. Barnes
147 what purport to be the remarks of Judge Thompson on that occasion. Shortly after those remarks were made by the Judge, they were repeated to me and I was familiar with them. A statement was also made, purporting to have come from Judge Thompson that we had better get our candles and lamps and begin to get busy. We felt, when we made the assessment, that we were bound absolutely by the mandate of the court and the deliberations of the court. I felt at the time that the values ought to be made on the information furnished by Mr. Greenacre from the School Teachers. The capital stock committee, of which I was a member, relied for information in fixing the values in the reassessment in relation to the complainant companies, upon the information furnished by the teachers, being complainant's Exhibit A. We made this assessment because I thought I wanted to satisfy the court and what the court wanted was to satisfy Mr. Greenacre and the teachers. I was not taking my own judgment in the matter at all. I did not take into consideration what other property throughout the State was valued at. I did not take into consideration what the capital stocks of these companies had been assessed at for the year 1900. As far as I remember no deduction was made in fixing the assessed value of the capital stock of these companies on the reassessment on account of property throughout the State on the average, personal and real, not having been returned at full value for assessment at its full value. In the year 1900 and other previous years the State Board of Equalization did not, I think, treat the bonded indebtedness of corporations as assets, and that was so in respect to all corporations throughout the State.

Twenty-six. The said Circuit Court erred in admitting and receiving in evidence, over the objection and exception of defendants' counsel the following testimony of John S. Cruttenden, a member of the Board of Equalization of the State of Illinois for the years 1900 and 1901:

148 "I remember the mandamus suit brought on the relation of Catherine Goggin and R. S. Steele against the State Board of Equalization. The writ of Mandamus was issued from the Circuit Court in Sangamon County, on or about the second of November, 1901, and I remember that an application was made on or about the 9th or 10th of November, to the Circuit Court of said County, for an extension of time within which to comply with the order as expressed in the writ, and I heard read what purported to be the remarks of Judge Thompson made on that application. The information upon

which we based the figures that we made for the re-assessment of 1900, was principally based upon the documents laid before us by the Teachers, known as Exhibit B. Our idea in making this assessment, was to comply with the request of the court. The assessment, as finally reached by us, upon these companies named as complainants in these cases, did not represent what we considered to be the value of their capital stock for the purposes of assessment; not according to the information that we gained afterwards. We supposed from this document, that these teachers had pretty reliable information on the values, and we took those figures almost all the way through. We concluded to take the example of the Peoples Gas Light and Coke Company cited by the court for all the cases, thinking that we would satisfy the court. It was the feeling of the Board that if we did not comply with the idea of the court, whether right or wrong, we would all go to jail. I know I had people calling at my office at Springfield and Chicago, at my offices, and informing me that it would be an unpleasant thing to go to jail about this matter. In making this report which was adopted by the Board, we did not make any deduction on account of the assessment against the capital stock that had been made against these companies. We did not make any
149 deduction, because of the fact that other property in the State had not been assessed, to its full value. We proceeded upon the theory that it was absolutely void; that they were not entitled to any credit, and we would not take any chances of punishment for contempt by giving them credit. You told us (Referring to counsel for Union Traction Company) that the Union Traction Company controlled the stock of the Underlying Companies; but we did not give any credit in the re-assessment. We assessed the whole stock of the other Company, too, upon the advice of Mr. Greenacre. In the case of the re-assessment of the Chicago Edison Company for 1900, we made no reduction on account of the Capital stock invested in patent rights. Prior to the year 1900, they equalized and endeavored to make the assessment upon the same basis as to values as property throughout the state was assessed.

Twenty-seventh. The said Circuit Court erred in admitting and receiving in evidence over the objection and exception of defendants' counsel the testimony of Louis D. Hirsheimer, a member of the State Board of Equalization of the State of Illinois, for the year 1901;

"I remember that about the 2nd of November, 1901, a writ of mandamus issued against the members of the State Board of Equalization, returnable November, 22nd, I believe, and that an application was made by the members of the State Board for an extension of time, within which to comply with the order of the court as expressed in its writ. The next morning I heard what purported to be extracts from the remarks of Judge Thompson, in rendering his decision on the application for an extension. The remarks were freely discussed at the hotel by members of the Board, and I was informed that he was very much displeased by the application for an extension even being asked; and finally gave them the ultimatum of making an

assessment, or of being punished for contempt of court. I
150 heard him say that all that was necessary was a lead pencil and a little time, that all it required was the sharpening of a lead pencil and getting to work. The printed form furnished by Miss Haley and Miss Goggin were principally relied upon in making up the figures. Before our report was made I talked with Mr. Smith. Mr. Greenacre stated that the report was all right. I felt that anything Mr. Greenacre would recommend the court would perhaps consider to some extent as right. I heard him say that whatever the views of any member of the Committee as to values to be taken the opinion laid down there was what it would be, or something to that effect. In making up the report, I did not take into consideration the fact that there had been assessments made on all of the complainant companies, except two. In making up the report as to the values of these properties, I did not make any deduction whatever, in order to equalize the values of these properties with the values of other property in the State. We made an application for an extension of time to make these returns, in order to have more time to consider, it, in arriving at our conclusion; but when that was denied, we had to make our report on such information as we had. In making these figures, to a very large extent, we acted upon the wishes of the Teachers' attorney and the Court's instructions.

In the matter of the Chicago Edison' Company's assessment for the year 1900, the capital stock was $6,000,000. That was assessed at 125, and a credit of $725,000 given for United States Patents, leaving $6,775,000. Taking the debt at par, $5,508,000, making a total value of $12,283,000 on a basis of 70 per cent.; making $8,598,100;, tangible property, $4,909,165, leaving 3,688,935, full value of the capital stock; one fifth value $737,787.

151 Twenth-eighth. The said Circuit Court erred in admitting and receiving in evidence over the objection and exception of defendants' counsel, the testimony of William M. Flook, as follows:

I made certain mathematical calculations and deductions, which are set forth in "Flook Exhibit A 11/25/03, H. W. B." That Exhibit was compiled, in a general way, from the collection and compilation of statistics and figures from the records of the State Board of Equalization, from the time it first commenced to make reports, in 1873, down to 1900, and from the report of the Railroad and Warehouse Commission of the State of Illinois, for 1900, *and from the report of the Railroad and Warehouse Commission of the State of Illinois, for 1900,* and from Brown's Directory of Gas Companies for the year 1900. I have reduced the result of that work to the form of a report or statement. This statement has been made from the source I have now described (referring to said Flook Exhibit A.)

Twenty-ninth. The said Circuit Court erred in admitting and receiving in evidence, over the objection and exception of defendants' counsel, the document known as "Flook Exhibit A, 11/25/03 H. W. B." as follows:

"From the report of the Railroad and Warehouse Commission for the year 1900 (pp. lxxx*ll*-lxxxv*ll*) it appears that there were in

that year 116 railroad companies operating within the state of Illinois that the total mileage of main line and branches owned by said railroad companies was 47,685.37; miles; that of such total mileage so owned by said railroad companies, 10,817.10 miles of main line and branches were located in Illinois; that 1,548.71 miles of second, third and fourth additional main tracks were so owned and located in Illinois; that 4,248.86 miles of yards, tracks, sidings and spurs were so owned and located in Illinois; that 164.61 miles of industrial tracks were so owned and located in Illinois,
152 and that 103.52 miles of new line building during the year 1900, exclusive of side tracks, were so owned and located in Illinois.

From said report it further appears (pp. lxxx*VII*-*Xcllll*) that the total amount *of* outstanding of capital stock of said railroad companies was $1,401,508,589.; that the amount of capital stock per mile of line was $28,867.; that the total amount outstanding of bonded debt of said railroad companies was $1,667,190,160.; and that the amount of funded debt per mile of line was $34,305.

Assuming that the value of the railroad property in this state was as great per mile of road as that out side of the state, and multiplying the mileage of the main lines and branches in Illinois (10,817 miles) by the amount of capital stock per mile of line ($28,867.), it appears that the capital stock of said 116 railroad companies represented by the mileage of main lines and branches owned by said railroad companies in this state was $312,254,339.

Upon the same basis, multiplying the mileage of the main lines and branches in Illinois (10,817 miles) by the amount of funded debt per mile of line ($34,306.), it appears that the funded debt of said 116 railroad companies represented by the mileage of main lines and branches owned by said railroad companies in this state was $371,077,185.

Upon the same basis the total amount of capital stock and funded debt represented by the mileage of main lines and branches owned by said railroad companies within this state was $683,331,524.

From the published report of the State Board of Equalization for the year 1900 it appears that the full value of all the railroad property in the State of Illinois, as found*ed* by said Board, included main tracks, second main tracks, side or turnout tracks, buildings on right of way and rolling stock, was $389,393,360.

153 From the published report of the State Board of Equalization for the year 1873 (p. 35) it appears that the following resolution was referred to the Committee on Assessment of Capital Stock of Corporations:

"Resolved, that for the purpose of equalizing between land, town and city lots, personal property, railroads and corporations, sixty per cent. be the rate of general average in the State."

From the published report of said Board for the year 1874 (p. 79) it appears that the Committee on Capital Stock of Corporations made a report to the Board, accompanying which was a table (pp. 86, *et seq.*) showing "The assessment of capital stock of companies

and associations incorporated under the laws of this State, other than railroad companies." Such companies and associations are listed in said table under the following headings: "Name of company; Location; Capital stock paid up; Total indebtedness, except for current expenses; Market or actual value of paid capital stock and debt; as determined by the state board; Capital stock and debt, as equalized with the aggregate assessment of the state, by deducting forty per cent. of market or actual value; Total equalized value of tangible property assessed where located; Assessed and equalized value of capital stock, being excess of equalized value of capital stock and debt over equalized value of tangible property." The report of said Committee was adopted by the Board (p. 96).

154 From the published report of said Board for the year 1875 (pp. 8, 9) it appears that the following resolution was adopted:

"Resolved that in the opinion of this Board, the real and personal property of the state is assessed for the year 1875 at fifty per cent. of its cash value."

From the published report of said Board for the year 1876 (pp. 7, 9) it appears that the following resolution was adopted:

"Resolved that it is the opinion of this Board that the real and personal property of the State has been assessed at fifty per cent. of its cash value, for the year 1876."

From the published report of said Board for the year 1877 (pp. 17, 18) it appears that the following resolution was offered:

"Resolved that it is the opinion of this Board that the real and personal property of the State is assessed for the year 1877 at sixty per cent. of its cash value."

That an amendment changing the percentage from sixty per cent. to fifty per cent. was accepted by the mover of such resolution, and that the same was then adopted.

From the published report of said Board for the year 1878 (p. 10) it appears that the following resolution was offered:

"Resolved that it is the opinion of this Board that the real and personal property of the State is assessed at sixty per cent. of its cash value for the year 1878."

155 That said resolution was amended by changing the percentage from sixty per cent. to fifty per cent., and as amended adopted.

From the published report of said Board for the year 1879 (pp. 10, 11) it appears that the following resolution was offered:

"Resolved that it is the opinion of this Board that the real and personal property of the State, is assessed at sixty-five per cent. of its cash value for the year 1879."

That said resolution was amended by changing the percentage from sixty-five per cent. to fifty per cent., and as amended adopted.

From the published report of said Board for the year 1880 (p. 6) it appears that the following resolution was adopted:

"Resolved that in the opinion of this Board the real and personal property of the state is assessed at fifty per cent. of its cash value, for the year 1880."

From the published report of said Board for the year 1881 (p. 9) it appears that the following resolution was adopted:

"Resolved that in the opinion of this Board the real and personal property of the State is assessed at fifty per cent. of its cash value, for the year 1881."

From the published report of said board for the year 1882 (p. 6) it appears that the following resolution was adopted:

"Resolved that in the opinion of this Board the real and personal property of the State is assessed at fifty per cent. of its cash value, for the year 1882."

156 From the published report of said Board for the year 1883 (p. 5) it appears that the following resolution was adopted:

"Resolved that in the opinion of this Board the real and personal property of the State is assessed at fifty per cent. of its cash value for the year 1883."

From the published report of said Board for the year 1890 (p. 5) it appears that the following resolution was adopted:

"Resolved that in the opinion of this Board, the real and personal property of this State, as returned by the local assessors for the year 1890, is assessed at twenty-five per cent of its fair cash value."

From the published report of said Board for the year 1891 (p. 9) it appears that the following resolution was adopted:

"Resolved that in the opinion of this Board, the real and personal property of this State, as returned by the Local Assessors for the year 1891, is assessed at an average rate not exceeding twenty-five per cent of its fair cash value."

From the published report of said Board for the year 1893 (p. 10) it appears that the following resolution was adopted:

"Resolved that in the opinion of this Board, the real and personal property of this State, as returned by the Local Assessors for the year 1893, is assessed at an average rate not exceeding twenty-five per cent. of its fair cash value."

As to each of the years from 1873 to 1900, inclusive, except the years expressly above referred to, no resolution similar to those above quoted was adopted: but the reports of said Board for each year show that the column containing the assessment placed by

157 said Board upon the capital stock of corporations, other than railroad companies, is entitled in the following language:

"Net assessment of capital stock, being excess of equalized value over the equalized value of tangible property."

158 Statement showing the capital stock and outstanding bonded indebtedness (as shown by Brown's Directory of American Gas Companies for 1900) of gas companies in Illinois, other than the Peoples Gas Light and Coke Company, together with the equalized value of the tangible property, and the "full value" of the capital stock and franchises of such companies as fixed by the state board of equalization for purposes of taxation in the year 1900.

	Capital stock.	Bonds.	Equalized value of tangible property.	Full value of capital stock and franchises as fixed by board.
Alton Ry. Gas & Electric Co	$500,000	$450,000	$39,276	$201,380
Aurora Gas Light Co	300,000	230,000	.....	25,000
Belleville Gas Light & Coke Co	50,000	17,000		
Union Gas & Electric Co. (Bloomington)	400,000	7,793	.....	163,965
People's Gas & Electric Light Co. (Canton)	50,000			
Centralia Light & Power Co	47,000	.....	5,100	30,500
Urbana & Champaign Gas & Electric Co. (Champaign)	500,000	435	25,045	250,000
Clinton Gas Co. (new Company)	50,000			
Danville St. Ry. & Light Co	700,000	525,000	85,000	425,000
Decatur Gas & Electric Co	400,000	372,000	35,481	250,000
Dixon Power & Lighting Co	100,000	38,500	.....	12,500
Du Quoin Light, Heat & Power Co	50,000	40,000	8,021	45,105
Elgin American Gas Co	100,000	305,000	.....	30,000
Northwestern Gas Light & Fuel Co. (Evanston)	2,000,000	.....	.....	25,000
Freeport Light & Fuel Co	100,000	36,000	5,563	57,815
Galena Gas Light Co	61,000			
Galesburg Gas & Electric Light Co	350,000	350,000	21,199	155,995
Galva Gas Light & Coke Co	30,000			
159 Jacksonville Gas Light & Coke Co	200,000	33,500	19,307	101,535
Joliet Gas Light Co	300,000	285,000	27,744	188,720
Citizens' Gas Co. (Kankakee)	150,000			
Kewanee Light & Power Co	100,000	80,000	6,315	56,575
La Grange Gas Co. (New Company)	100,000			
Peru-La Salle Gas Light & Power Co. (La Salle)	130,000	100,000		
Lincoln Gas Co	100,000	85,000	4,800	90,000
Litchfield Light, Heat & Power Co	50,000	35,000	263	6,315
Macomb Electric Light & Gas Co	50,000			
Mattoon Gas Light & Coke Co	50,000	50,000	.....	12,500
Mendota Light & Heat Co	25,000	8,800	.....	5,000
People's Power Co. (Moline)	300,000	200,000	17,923	115,000
Monmouth Gas Co	30,000	20,000	8,500	42,500
Morris Gas Co	40,000	20,000	1,496	12,480
Murphysboro Water Works, Electric & Gas Light Co	80,000	80,000	10,817	56,586
Ottawa Gas Light & Coke Co	100,000	.....	3,822	24,110
Paris Gas Light & Coke Co	50,000	.....	.....	10,000
Pekin Light, Heat & Power Co	100,000	100,000	7,734	63,670
People's Gas & Electric Co. (Peoria)	500,000	.....	37,422	212,110
Peoria Gas Light & Coke Co	300,000	.....	47,200	236,000
Quincy Gas & Electric Co	600,000	600,000	31,255	300,000
Rockford Gas Light & Coke Co	300,000	485,000	16,754	125,000
Springfield Gas Light Co	75,000	.....	27,264	136,320
Sterling Gas & Electric Light Co	40,000	36,000	5,560	27,800
Streator Gas & Light Co	100,000	60,000	.....	15,000
Citizens' Gas Light & Fuel Co. (Taylorville)	12,280	.....	553	10,000
North Shore Gas Co. (Waukegan)	1,000,000			
Ogden Gas Co. (Chicago)	5,000,000	.....	37,826	239,130
	$15,922,280	$4,782,235	$572,982	$3,948,610

160 *Statement Showing Aggregate Assessments Made by Local Assessors in the Years* 1873 *to* 1900.

1873	$1,210,108,863
1874	1,105,658,176
1875	1,025,428,289
1876	958,405,803
1877	892,380,972
1878	818,987,409
1879	744,742,846
1880	739,462,515
1881	746,034,852
1882	750,635,758
1883	756,422,291
1884	746,547,501
1885	733,533,951
1886	726,178,132
1887	726,078,638
1888	709,304,506
1889	711,515,026
1890	727,549,707
1891	737,504,791
1892	745,754,172
1893	760,837,855
1894	737,989,016
1895	743,840,153
1896	731,215,488
1897	713,443,706
1898	693,443,706
1899	895,869,090
1900	779,513,078

161 *Statement Showing Total Value of Personal Property as Assessed by Local Assessors for the Years* 1873 *to* 1900.

1873	$301,566,517
1874	267,469,471
1875	239,102,189
1876	212,893,542
1877	187,648,455
1878	169,815,099
1879	151,629,963
1880	165,091,710
1881	168,674,777
1882	167,304,024
1883	167,276,876
1884	159,767,095
1885	153,333,048
1886	147,998,610

1887	148,246,088
1888	140,990,725
1889	142,726,240
1890	141,981,057
1891	143,529,274
1892	143,799,494
1893	145,136,023
1894	127,973,857
1895	129,254,545
1896	120,428,916
1897	117,098,946
1898	114,215,007
1899	183,526,987
1900	166,542,866

162 *Statement Showing the Aggregate Value of Lands as Assessed by the Local Assessors During the Years* 1873 *to* 1900.

1873	$643,196,808
1874	586,022,941
1875	552,012,889
1876	522,394,667
1877	491,723,358
1878	447,942,329
1879	412,208,278
1880	398,338,737
1881	399,267,959
1882	395,757,100
1883	394,016,653
1884	389,109,470
1885	380,488,162
1886	371,940,467
1887	365,476,933
1888	352,995,885
1889	348,604,543
1890	345,750,094
1891	343,624,261
1892	339,043,920
1893	338,064,144
1894	334,030,873
1895	332,409,485
1896	329,474,124
1897	323,837,358
1898	319,047,998
1899	315,963,816
1900	309,394,797

163 *Statement Showing the Aggregate Value of Town and City Lots as Assessed by the Local Assessors During the Years* 1873 *to* 1900.

1873	$241,820,362
1874	245,854,685
1875	228,814,552
1876	218,055,488
1877	208,540,957
1878	197,031,558
1879	177,567,698
1880	173,260,959
1881	176,023,751
1882	185,592,977
1883	193,063,755
1884	195,642,562
1885	197,741,226
1886	203,835,559
1887	210,112,460
1888	213,400,542
1889	218,332,464
1890	237,654,199
1891	249,141,918
1892	260,408,429
1893	275,029,263
1894	273,693,566
1895	280,074,344
1896	279,307,191
1897	270,633,137
1898	258,323,686
1899	393,262,409
1900	300,913,328

164 *Statement Showing Aggregate Assessment on Town and City Lots in Cook County as Assessed by the Local Assessors During the Years* 1873 *to* 1900.

1873	$90,447,759
1874	100,689,670
1875	97,795,613
1876	96,789,412
1877	94,637,338
1878	95,374,127
1879	85,791,192
1880	85,635,165
1881	87,192,987
1882	95,448,675
1883	101,456,866
1884	103,408,025
1885	107,295,606
1886	112,994,128
1887	119,437,668
1888	123,132,781
1889	126,795,669
1890	143,347,119
1891	150,690,710
1892	157,446,400
1893	164,389,327
1894	165,045,268
1895	169,252,421
1896	167,671,344
1897	158,767,689
1898	146,672,035
1899	285,717,467
1900	192,550,863

FLOOK EXHIBIT A, 11, 25, '02. H. W. B.

Comparative Statement Showing State Aggregate Average of the Value of Personal Property as Assessed by Local Assessors for the Years 1873 *to* 1900

	Horses.	Cattle.	Mules and asses.	Sheep.	Hogs.	Steam engines, including boilers.	Fire or burglar proof safes	Billiard tables, etc.	Carriages and wagons.	Watches and clocks.	Sewing and knitting machines.	Pianos.	Melodeons and organs.
1873....	$52.41	$17.74	$59.09	$1.96	$3.17	$679.05	$105.80	$92.58	$35.86	$6.89	$32.50	$142.95	$60.39
1874....	45.92	15.63	50.39	1.62	2.60	582.67	84.63	75.21	31.22	5.61	25.31	117.63	53.02
1875....	40.95	14.27	45.75	1.51	2.90	504.27	76.83	65.56	27.72	5.65	21.56	102.57	47.22
1876....	36.92	13.37	40.70	1.44	3.35	408.85	65.85	55.86	24.92	4.55	18.32	87.68	41.58
1877....	33.90	12.38	36.92	1.30	2.56	364.89	58.94	43.14	21.94	4.01	14.01	76.43	35.99
1878....	29.63	11.19	32.39	1.15	1.50	321.94	53.30	39.14	18.88	3.62	10.44	67.42	28.95
1879....	26.63	10.15	28.82	1.10	1.36	194.15	45.19	34.23	17.13	3.18	8.42	59.23	24.66
1880....	26.56	9.95	29.77	1.29	1.53	247.99	40.71	30.44	16 56	3.11	7.71	54.68	22.36
1881....	27.66	10.04	31.50	1.29	1.86	236.64	40.23	29.98	17.01	3.00	7.29	52.42	20.55
1882 ..	28.22	10.18	31.17	1.28	2.03	247.88	38.71	31.24	15.34	2.94	6.79	51.12	19.42
1883...	28.89	10.45	32.21	1.25	2.23	240.05	32.56	31.10	14.42	2.83	6.39	49.21	18.20
1884....	28.41	10.13	31.20	1.16	1.85	221.29	33.75	31.02	13.62	2.78	5.97	46.11	16.92
1885....	27.16	9.61	29.26	.99	1.55	205.57	31.92	28.83	12.52	2.62	5.58	45.88	14.89
1886....	26.13	8.84	27.39	.95	1.32	184.78	29.29	27.55	11.72	2.53	5.25	42.39	14.09
1887....	25.80	8.31	26.79	.96	1.48	176.79	28.39	24.92	11.38	2.47	5.12	40.18	13.41
1888....	24.88	7.11	25.03	.96	1.42	167.35	26.50	24.27	10.71	2.39	4.74	38.45	12.46
1889....	24.21	6.59	24.46	.98	1.52	154.37	26.10	22	10.10	2.27	4.53	37.00	11.74
1890....	22.96	6.43	23.44	1.02	1.39	151.97	25.73	22..	9 67	2.19	4.46	37.16	11.25
1891....	21.96	6.30	22.94	1.07	1.25	149.14	25.82	21.6[illegible]	9.35	2.16	4.34	34.29	10 51
1892...	20.74	6.07	21.64	1.06	1.26	142.50	25.00	22.09	9.10	2.09	4.23	33.65	10.11
1893....	19.41	6.34	20.69	1.04	1.69	138.51	23.06	21.09	9.15	2.05	4.12	32.63	9.75
1894...	14.87	6.26	16.63	.84	1.43	130.37	21.84	19.31	8.55	1.98	3 98	29.74	9.11
1895....	12.84	6.68	13.84	.85	1.42	125.87	21.22	18.38	8 09	1.92	3.94	29.08	8.63
1896....	11.33	6.49	12.15	.80	1.26	121.88	20.54	18.59	7.83	1.91	3.74	27.49	8.22
1897....	10.49	6.58	11.14	.82	1.29	117.99	20.67	16.91	7.29	1.78	3.59	26.58	7.90
1898...	10.64	6.63	11.69	.86	1.22	112.96	19.40	16.43	7.02	1.72	3.48	25.75	7.36
1899....	8.20	5.03	8.83	.72	.84	94.88	10.16	13.10	4.71	1.64	2.21	19 53	4.95
1900....	9.06	4.92	9.88	.76	1.07	85.99	9.41	7.92	4.45	1.52	1.99	18.09	4.39

166 Thirtieth. Said Circuit Court erred in admitting and receiving in evidence, over the objection and exception of Defendants counsel, the testimony of Edward J. E. Ward, as follows:—

I have been familiar for over twenty years with the concern known as the Union Stock Yards and Transit Company; said Company is a very large market for the sale of all sorts of live stock, cattle, hogs, horses and so forth. It is the sole market of the kind in Cook County for cattle, hogs, sheep and live-stock generally. I have procured, under direction, the annual reports of the Union Stock Yards and Transit Company, and from those reports and from other data I have prepared a statement showing the number of cattle, the hogs and horses received at the Union Stock Yards and Transit Company during the year 1899 to 1901 inclusive, the total value of each kind of animals, and average value per head, compiled from those statistics. This paper which I now show you, is that compilation.

(Witness here produced Ward Exhibit B, November 12, 1903.)

From this compilation it appears that during the year 1899, 2,514,446 head of cattle, of a total value of $123,207,854, or an average value of $49 per head, was received; in the same way, for the year 1900, there were 2,729,046 head of cattle, of a total value of $136,452,300, of the average value per head of $50; and in the year 1901, without specifying the name or number of cattle, the average price received was $48 per head. In 1899 the average price per head was $9.74.

167 For the year 1900, the average price per hog received was $11.84; for the year 1901, $13.00. With reference to horses, the average prive received in 1899 was $112.50; in 1900, $116; in 1901, $120. All these figures are taken from the annual reports of the Union Stock Yards and Transit Company that have been referred to.

Thirty-first. The said Circuit Court erred in admitting and receiving in evidence, over the objection and exception of defendants' counsel, the document known as Ward Exhibit B, November 12, 1903, which was as follows:—

WARD EXHIBIT B.

Nov. 12, '03.

Statement showing the number of cattle, hogs and horses sold at the Union Stock Yards, Chicago, during the calendar years 1899 to 1901, inclusive, the total value of each kind of animals and the average value per head. Compiled from the annual Statistical reports of the Union Stock Yard and Transit Company for the years indicated.

Cattle.

Year.	Number of head.	Total value.	Average per head.
1899	2,514,446	123,207,854	$49
1900	2,729,046	136,452,300	50
1901	3,031,396	145,507,008	48

168

Hogs.

1899	8,177,870	$79,734,233	9.74
1900	8,109,064	96,092,408	11.84
1901	8,290,494	107,776,422	13.00

Horses.

1899	111,611	12,556,237	112.50
1900	99,010	11,485,160	116.00
1901	109,353	13,122,360	120.00

Thirty-second. The said Circuit Court erred in admitting and receiving in evidence over the objection and exception of defendants' Counsel, a report from the Illinois State Board of Agriculture for December 1900, as follows:—

"Livestock, Hogs: There is a slight increase in the number of hogs assessed this year over 1899, the number reported being 2,829,960. In the Northern Division of the State there were 1,210,227; in the Central Division 1,138,979; and in the Southern Division 480,754. At the equalized value of $1.07 per head, they were worth $3,028,057.00. The number of corn fed hogs marketed was 2,348,855, or 83 per cent. of the number assessed, and their average live weight was 225. The heaviest hogs marketed were in Northern Illinois, where their average weight was 243 pounds. In the Central Division the average weight was 218 pounds and in the Southern Division 195 pounds. The total live weight of the hogs marketed during the year was 527,833,094. The average price received
169 of $4.35 per cwt. is the highest since 1894 and varied but little in different sections of the State. At this rate the total value of the hogs marketed would be $23,066,408, of which amount Northern Illinois received $10,609,820.00; Central Illinois $9,126,358; and Southern Illinois, $3,330,230.00."

"The following table shows assessed and marketed in 1899, as well as their weight and value for the last 45 years. For 1899, the assessor's returns of the number of hogs was 2,796,483, of a value of $2,349,046.00. 83% is the estimated per cent. of the total crop that was marketed. The number of hogs that were marketed in that year was 2,321,060. The total gross weight per head was 234 pounds; the total gross weight, 542,267,060 pounds. The value per cwt. gross, $3.60; and the total value of hogs marketed was $19,658,897.00.

"For the year 1900 the Assessors' returns were 2,829,960 hogs of the value of $3,028,057.00. 83% is the estimated per cent. of the total number that were marketed. The total number that were actually marketed is 2,348,855. The average gross weight per head was 225 pounds. The total gross weight, 527,833,094; the value per cwt. gross, was $4.35, and the total value received, from hogs marketed $23,066,408.00.

"More cattle were reported by the Assessors this year than last, 2,009,598 being returned. Of this number 1,085,050 were in Northern Illinois, 658,663 in Central Illinois, and 265,885 in the Southern Division of the State at the equalized value of $4.92 per cwt.,
(?) they were worth to the feeder $9,887,222. 23% of the
170 number assessed, or 462,197 were marketed, their average live weight being 1125 pounds. In the Northern Division of the State the average weight of the cattle marketed was 1115 pounds; in Central Illinois 1205 pounds; and in Southern Illinois but 968 pounds. The total weight of cattle marketed was 520,065,-373 pounds. The average value of the cattle sold during the year was $4.25; and the total value $22,089,527.00,—the best returns for this class of live stock since 1884. Over half of this amount $11,586,603.00 should be credited to Northern Illinois, $8,209,791.00 to Central Illinois and $2,203,073 to Southern Illinois."

Thirty-third. The said Circuit Court erred in admitting and receiving in evidence, over the objection and exception of Defendants' Counsel, the document known as Ward Exhibit C, November 12, 1903, as follows:—

WARD EXHIBIT C.

Nov. 12, '03.

Statement showing the number of head of Horses, Cattle and Hogs in the State of Illinois, returned for taxation in 1900 by the Local Assessors, compared with the number of Head of Horses, Cattle & Hogs in the State of Illinois, on June 1st, 1900 according to United States Census Office returns.

Kind.	Number of head returned by local assessors in Illinois for 1900.	U. S. Census for June 1st, 1900.	Difference.
Horses	1,209,446	1,350,219	140,773
Cattle	2,438,275	3,104,010	665,735
Hogs	2,690,367	5,915,468	3,225,101

171 Thirty-fourth. The said Circuit Court erred in admitting and receiving in evidence, over the objection and exceptions of defendants' Counsel, the following evidence admitted into the record between counsel only in the event that the same was competent and material to the issues:

"That the Union Stock Yards and Transit Company now owns and conducts in the City of Chicago a live stock yard and market for the reception, handling, sale and disposition of all kinds of live stock, and has continuously conducted and operated the same since 1865;

That at said market there is received annually a large number of horses, cattle, hogs, sheep and other live stock which are sent to said market to be sold and disposed of to purchasers there gathered from all parts of the United States and Europe;

That such live stock is received from all parts of the United States but chiefly from the territory lying west, north and south of the State of Ohio;

That in the course of business, as conducted at said market, the prices of all live stock sold in said market are recorded in books kept for that purpose by the Union Stock Yards and Transit Company, and that said Union Stock Yards and Transit Company annually and at the end of each calendar year or shortly thereafter compiled and tabulates the result of the trade in said live stock during said year at said market, and the prices realized for the said live stock, which tabulation of values is thereupon by the Union Stock

172 Yards and Transit Company printed and published generally in the form of the annual report heretofore produced and offered in evidence by the complainant at the hearing before the Master on Nove.. r 12, 1903,

That from the annual report of said Union Stock Yards and Transit Company appears that the total receipts of live stock at said market since its establishment in the year 1865 up to and including the year 1901 were

65,125,851 Head of Cattle,
2,518,278 Calves,
202,197,439 Hogs,
52,142,667 Sheep,
1,644,620 Horses.

That the total sum realized for the live stock so received and sold at the said market during that period was the sum of $5,792,-705,549.00."

Thirty-fifth. The said Circuit Court erred in admitting and receiving in evidence over the objections and exceptions of defendants' Counsel the testimony of Williston Fish, as follows:

I am a lawyer, in the employ of the Chicago Union Traction Company. I prepared the schedules of property for the Company for the years 1900, 1902, and 1903. I have made an investigation of the sales of stocks and bonds of the Chicago Union Traction Company and the Underlying Companies on the Stock Exchange during the entire existence of the Chicago Union Traction Company, and I have made a memorandum of the amount of such sales, which

is contained in this report. (Referring to Exhibit 1 to the
173 deposition of Williston Fish.) I used the yearly reports made by the newspapers called the Economist, published in Chicago, and giving the sales and prices for each year from 1899 to 1903, and I also obtained the reports from the daily papers, published in Chicago during that time. I have an intimate knowledge of the affairs of the Company and the market quotations for the last four years of the stocks and bonds of the Chicago Union Traction Company, and its underlying companies, on the stock exchange, do not give a fair indication of the real value of the property of said company. I have spent about a third of my time since 1899, in making inventories, and examining the tangible personal property of said Chicago Union Traction Company and the underlying Companies. On April 1st, 1900, all of the property of the Chicago Union Traction Company, including realty and personalty and franchises was worth less than $27,000,000, and all the property of the underlying companies at the same time was worth $12,242,972.12.

Thirty-sixth. The said Circuit Court erred in admitting and receiving in evidence, over the objection and exception of Defendants' Counsel, the document known as Exhibit 1 of the testimony of W. Fish, 11/25/03 as follows:

The following statement shows the high and low values on the Chicago Stock Exchange and the amounts dealt in of the stocks and bonds named, in each of the years 1899, 1900, 1901, 1902, and in 1903 up to November.

174 Chicago Union Traction Company.

Common Outstanding, 20,000.

	Date low.	Low.	High.	Date high.	Sales.
1899	Dec. 22	23	39	Aug. 25	40,066
1900	Dec. 15	8½	29½	Jan. 5	47,577
1901	May 9	9½	20¾	May 28	126,544
1902	Jan. 16	10	22⅞	Apr. 29	134,032
1903	June 19	3½	17	Jan. 13	23,245

175 Chicago Union Traction Company.

Preferred Outstanding, 12,000,000.

	Date low.	Low.	High.	Date high.	Sales.
1899	Dec. 22	72	87¾	Aug. 31	28,158
1900	Dec. 15	40	78½	Jan. 2	45,211
1901	Dec. 19	47	61½	June 7	41,222
1902	Dec. 23	45	59½	Apr. 29	19,420
1903	Apr. 22	26	51	Jan. 13	8,365

176 West Chicago Street Railway Company.

Issued	13,189,000
Owned by C. U. T. Co.	3,216,000
Outstanding	9,973,000

Year.	Date low.	Low.	High.	Date high.	Sales.
1899	Jan. 3	91⅜	124¼	Sept. 1	127,989
1900	Dec. 22	96½	113	Feb. 5	31,405
1901	Nov. 21	90	108	Mar. 15	30,108
1902	Dec. 15	83	103¼	May 2	14,680
1903	Oct. 10	50	93	Jan. 14	8,717

177 North Chicago Street Railroad Company.

Stock issued	7,920,000
Owned by C. U. T.	2,022,600
Outstanding	5,897,400

Year.	Date low.	Low.	High.	Date high.	Sales.
1899	Jan. 24	217	250¼	May 1	20,256
1900	Dec. 26	190	228	Feb. 7	3,729
1901	Dec. 2	180	207	Mar. 1	4,694
1902	Dec. 22	158	199¾	Apr. 29	4,917
1903	Oct. 5	95	175	Jan. 14	4,122

178 Chicago Consolidated Traction Company.

4½'s, $—.

Year.	Date low.	Low.	High.	Date high.	Sales.
1899					
1900					
1901					
1902	Feb. 11	67	80	Mar. 27	219,000
1903	Oct. 20	60	70½	Apr. 2	136,000

179 North Chicago Street Railroad Company.

First Mortgage, 5's, 1906 { Total, 1906 & 1909, $3,171,000.

The 1906's are:

Year.	Date low.	Low.	High.	Date high.	Sales.
1899	July 21	105¼	108½	Oct. 27	23,500
1900	Dec. 31	104⅜	105⅛	Dec. 19	16,000
1901	Oct. 4	104	104½	July 3	10,500
1902	Feb. 28	103	103	May 5	31,500
1903	June 4	97	100	Mar. 9	19,000

The 1909's are:

1899					
1900	Nov. 19	105⅞	106¾	May 16	24,000
1901	Oct. 9	106	106½	Aug. 6	19,000
1902	Apr. 2	104	104¼	Feb. 24	11,000
1903	June 5	97	99½	Mar. 26	9,000

180 North Chicago City Railway Company.

4½'s, 2,500,000.

Year.	Date low.	Low.	High.	Date high.	Sales.
1899	Nov. 21	107	109¾	July 14	23,000
1900	Feb. 9	107⅛	108⅞	June 5	54,000
1901	Dec. 17	105	108½	May 21	53,000
1902	Aug. 1	105	107	Apr. 10	14,000
1903	May 7	98	103	Jan. 29	12,000

181 West Chicago Street Railroad Company, Consolidated.

5's, $6,114,000.

Year.	Date low.	Low.	High.	Date high.	Sales.
1899	Jan. 3	94¾	107½	July 12	2,924,000
1900	Dec. 17	100	104½	Jan. 5	900,000
1901	Dec. 26	98⅞	104½	Apr. 13	749,500
1902	Dec. 11	94	101½	Apr. 4	340,000
1903	Sept. 12	80	97¼	Jan. 14	135,000

182 West Chicago Street Railroad Company.

Debenture 6's, $497,000.

Year.	Date low.	Low.	High.	Date high.	Sales.
1899	Mar. 6	100	102	June 14	158,000
1900	July 19	100	100½	Oct. 30	89,000
1901	Nov. 25	100	100¾	Sept. 4	37,000
1902	Sept. 23	99½	100¼	May 5	9,000
1903	May 31	87	106	Jan. 13	19,000

183 West Chicago Street Railroad Company.

1st Mortgage, 5's.

Year.	Date low.	Low.	High.	Date high.	Sales.
1899	Apr. 11	109	112	July 13	104.000
1900	Jan. 20	108	111½	June 21	111,000
1901	Dec. 14	109½	111	May 13	123,000
1902	Dec. 29	104¾	109½	May 1	141,000
1903	July 23	96	104	Feb. 25	78,000

184 Chicago West Division Railway Company.

4,016,000 4½'s.

Year.	Date low.	Low.	High.	Date high.	Sales.
1899					
1900	Apr. 19	107¾	109	Apr. 4	7,000
1901	Oct. 22	108½	110	Mar. 7	6,000
1902	Mar. 24	109½	109½	Nov. 3	5,000
1903	Oct. 1	93	105	Jan. 20	35,000

185 Thirty-seventh. The said Circuit Court erred in admitting and receiving in evidence over the objection and exception of defendants' counsel the testimony of William G. Beale, as follows:

"I appeared before the State Board of Equalization, and gave to said Board detailed information in reference to the value of the property of the Chicago Edison Company, and handed said Board a pamphlet entitled 'Report of Chicago Edison Company for the fiscal year ending March 31, 1900,' which was offered and received in evidence as Complainant's Exhibit A 10/29/'02, H. W. B.; that I compiled the information contained in said report in reference to the value of the capital stock, and the amount of bonded indebtedness. A part of the information I got from direct investigation, and

part from public reports, and a part from employing an agent to go out and find the facts.

Thirty-eighth. The said Circuit Court erred in admitting and receiving in evidence over the objection and exception of Defendants' Counsel, the documents marked Complainant's Exhibit A, which document is attached to the bill of complaint in the case of the Chicago Edison Company *vs.* Samuel B. Raymond *et al.*, in the Circuit Court of the United States for the Northern District of Illinois, No. 26,163.

186 Thirty-ninth. The said Circuit Court erred in admitting and receiving in evidence over the objection and exception of defendants' counsel, the document entitled Complainant's Exhibit B, which document is attached to the bill of complaint in the case of the Chicago Edison Company *vs.* Samuel B. Raymond *et al.*, now pending in the Circuit Court of the United States for the Northern District of Illinois, No. 26,163.

Fortieth. The said Circuit Court erred in admitting and receiving in evidence over the objection and exception of defendants' counsel, the testimony of Arthur D. Wheeler, as follows:

"I appeared before the State Board of Equalization while it had under consideration the proper capital stock assessment for the Chicago Telephone Company for the year 1900, and answered questions and gave information to said Board, concerning the capital stock valuations of said Company. One of the members of the Capital Stock Committee of the Board stated that the Committee could not or would not act until they had received word as to the wishes or ideas of the Court. At about this stage one of the attorneys for the relators in the Mandamus proceeding came into Court with a paper in his hand, and I was ushered out, and fifteen or thirty minutes after that the Committee reported the assessment against the Chicago Telephone Company, which was afterwards accepted by the State

187 Board.

Forty-first: The said Circuit Court erred in admitting and receiving in evidence over the objection and exception of defendants' counsel, the following evidence of Fred E. Smith:

"The ordinary operation of a street railroad results in a gradual depreciation of its plant. A charge ought to be made every month on account of such depreciation. Such depreciation in the case of the Chicago Union Traction Company amounts to a little over seven and one half per cent. per annum of the entire value of the property. No such depreciation had been charged against the Chicago Union Traction Company on its books. I have prepared a statement of the income and expenses of the Chicago Union Traction Company for the fiscal year ending June 30, 1900. It is that which I hand you. (Referring to Complainant's Exhibit 1, set forth in the Master's report, filed June 9, 1902). I have made a compilation upon the lines laid down by Judges Grosscup and Humphrey in their opinion, as to what the taxes would amount to if they were fixed at the rate of 8.035. I capitalized the true net income of 2,057,352.61 upon a six per cent. basis, which resulted in a capitalization of $34,289,210.17. I equalized these on a seven per cent. basis,

which produces a capitalization of $24,002,447.12; took one-fifth of this for the assessed value, which was $4,800,489.42. As computed on the basis of that rate, 8.035 it produces $385,719.32. I then deducted the taxes already paid of $239,097.22, leaving the amount to be paid $146,622.10.

188 Forty-second. The said Circuit Court erred in admitting and receiving in evidence, over the objection and exception of Defendants' counsel, Exhibit Number 1, offered and received in evidence in the case of the Chicago Union Traction Company *vs.* Samuel B. Raymond *et al.*, No. 26,609, contained in the Master's Report, filed in said cause, June 9, in the following words:

Chicago Union Traction Company.

Income Account, Year Ending June 30th, 1900.

Income from all sources:		
Passenger Receipts	$7,468,797.98	
Chartered Cars	2,122.50	
Mail	6,477.58	
Advertising	33,576.95	
Rent of Land and Buildings	35,622.14	
Rent of Tracks and Terminals	10,000.00	
Interest on Deposits	17,690.11	
Miscellaneous	3,336.03	
Total Income from all sources		$7,577,623.29
Expenses:		
Maintenance—Way & Structures	193,666.90	
Maintenance—Equipment	381,082.87	
Transportation	2,836,167.01	
General Expenses	1,119,962.07	
Interest on Loans	41,776.80	
189 Depreciation, being 6% of $9,364,928.57, full value of personal property, said full value being obtained upon the assumption that the Assessors' full valuation of said personal property for the year 1900, to-wit: $6,555,450, was only 70% of real value	561,895.71	
Total Expenses		$5,134,551.36
Net earnings applicable to payment of Bond interest, rentals and taxes		$2,443,071.93
Deducting taxes for 1900, already paid		239,097.22
Leaving net income		2,203,974.71

This amount will be further reduced by the amount of taxes to be paid under the decision rendered by Judges Grosscup and Humphreys."

Forty-third. The said Circuit Court erred in admitting and receiving in evidence, over the objection and exception of Defendants' Counsel, oral testimony for the purpose of explaining, varying and contradicting the official acts, records and proceedings of the State Board of Equalization for the years 1900 and 1901, wherein and whereby said Board made the assessment against the property of the complainant sought to be enjoined in this cause.

Forty-fourth. The said Circuit Court erred in refusing and failing to hold that parol evidence was incompetent, for the purpose of explaining, varying or contradicting the official acts, records and proceedings of the State Board of Equalization of the State of Illinois, in reference to the assessments on the capital stock
190 of the complainant, made by the said board in the year 1901, for the year 1900.

Forty-fifth. The said Circuit Court erred, in failing and refusing to hold that inasmuch as complainant contributed to the expense of said Mandamus suit, instituted in the Circuit Court of Sangamon County, Illinois, against the State Board of Equalization of the State of Illinois, for the purpose of compelling said Board to assess the capital stock of the complainant and the other corporations therein named, for the year 1900, and inasmuch as the complainant participated in directing and controlling the conduct of said litigation, therefore the complainant was concluded by the outcome of said suit, and the proceedings of said State Board of Equalization, and the assessment of the Capital Stock of Complainant for the year 1900, made by the said State Board of Equalization of the State of Illinois, in obedience to said writ of Mandamus, and said Circuit Court erred in failing and refusing to hold, that all of the aforesaid proceedings are *res adjudiciata*, and constitute estoppel by judgment and verdict against the Complainant, conclusively establishing the validity and regularity of the said assessment complained of in the bill of complaint in this cause.

In all of which respects these defendants claim that the aforesaid judgment and decree of said Circuit Court are erroneous, illegal and invalid, and therefore these defendants pray that the
191 said judgment and decree may be reversed, set aside and held for nought.

HARRY A. LEWIS,
WILLIAM F. STRUCKMAN,
JAMES HAMILTON LEWIS, AND
DAVID K. TONE,
Solicitors for the Above Named Defendants.

(Endorsed:) Filed Aug. 10, 1906 Marshall E. Sampsell, Clerk.

192 And on to-wit: the tenth day of August, being one of the days of the regular July term of said Court, 1906, in the record of proceedings thereof in said entitled cause before the Hon.

Peter S. Grosscup, Circuit Judge, appears the following entry to-wit:

Order of August 10, 1906, *Allowing Appeal.*

26610.

CHICAGO CONSOLIDATED TRACTION COMPANY
vs.
SAMUEL B. RAYMOND, County Treasurer of Cook County, Illinois, and *ex-officio* County Collector, Cook County, Illinois, and JOHN J. HANBERG, His Successor as County Treasurer of Cook County, Illinois, and *ex-officio* County Collector of Cook County, Illinois, and *ex-officio* Town Collector of the Town of North Chicago, and THE CITY OF CHICAGO.

Upon motion of David K. Tone, Esq., solicitor for the defendants, and on filing petition for an order allowing an appeal, together with assignment of error*d*, It is ordered that an appeal be and is hereby allowed to the Supreme Court of the United States from the decree entered herein on the twenty-fifth day of July, 1906, and that the amount of the bond upon appeal be and hereby is fixed at the sum of two hundred dollars. Said bond to be approved by the Clerk of this Court.

193 And on to-wit: the fifth day of September, 1906, there was filed in the Clerk's office of said Court in said entitled cause a certain Bond on Appeal in words and figures following to-wit:

194 Know all men by these presents, that we, Samuel B. Raymond, County Treasurer of Cook County, Illinois, and *ex-officio* County Collector of Cook County, Illinois, and John J. Hanberg, his successor in office as County Treasurer of Cook County, Illinois, and *ex-officio* County Collector of Cook County, Illinois, and *ex-officio* Town Collector of the Town of North Chicago, and The City of Chicago, as principals and National Surety Company, as surety, are held and firmly bound unto Chicago Consolidated Traction Company in the full and just sum of Two Hundred ($200.00) Dollars, to be paid to the said Chicago Consolidated Traction Company its certain attorney, successors or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly and severally, by these presents. Sealed with our seals, and dated this 30th day of August, in the year of our Lord one Thousand nine hundred and six.

Whereas, lately at a session of the Circuit Court of the United States for the Northern District of Illinois, Eastern Division, on July 25th, A. D. 1906, in a suit depending in said Court, between Chicago Consolidated Traction Company, complainant, and Samuel B. Raymond, County Treasurer of Cook County, Illinois, and *ex-officio* County Collector of Cook County, Illinois, and John J. Hanberg, his successor in office as County Treasurer of Cook County, Illinois, and *ex-officio* County Collector of Cook County, Illinois, and

ex-officio Town Collector of the Town of North Chicago, and The City of Chicago, defendants, a decree was rendered against the said defendants above named, restraining them from collecting
195 certain taxes levied against the property of complainant, and the said defendants above named, having obtained an appeal to the Supreme Court of the United States and filed a copy thereof in the Clerk's office of the said Court to reverse the decree in the aforesaid suit,

Now, the condition of the above obligation is such that if the said Samuel B. Raymond, County Treasurer of Cook County, Illinois, and *ex-officio* County Collector of Cook County, Illinois, and John J. Hanberg, his successor in office as County Treasurer of Cook County, Illinois, and *ex-officio* County Collector of Cook County, Illinois, and *ex-officio* Town Collector of the Town of North Chicago, and The City of Chicago, shall prosecute their appeal to effect, and answer all damages and costs if they fail to make their plea good, then the above obligation to be void; else to remain in full force and virtue.

S. B. RAYMOND, [SEAL.]
County Treasurer of Cook County, Illinois, and ex-Officio County Collector of Cook County, Illinois.
JOHN J. HANBERG, [SEAL.]
Successor to Samuel B. Raymond, as County Treasurer of Cook County, Illinois, and ex-Officio County Collector of Cook County, Illinois, and ex-Officio Town Collector of the Town of North Chicago.
CITY OF CHICAGO,
[SEAL.] By E. F. DUNNE, *Mayor.*

Attest:
A. C. ANSON,
City Clerk.

NATIONAL SURETY COMPANY,
[SEAL.] CHARLES S. CRAIN, *Attorney in Fact.*

Approved:
MARSHALL E. SAMPSELL, *Clerk.*

(Endorsed:) Filed Sep. 5, 1906. Marshall E. Sampsell, Clerk.

196 And on to-wit: the twenty-sixth day of September, 1906, there was filed in the clerk's office of said court in said entitled cause, a certain Stipulation in words and figures following to-wit:

Stipulation.

In the Circuit Court of the United States, Northern District of Illinois, Eastern Division Thereof.

In Chancery. No. 26610.

CHICAGO CONSOLIDATED TRACTION COMPANY, Complainant,
vs.
SAMUEL B. RAYMOND, County Treasurer of Cook County, Illinois, and *ex-officio* County Collector of Cook County, Illinois, and JOHN J. HANBERG, His Successor as County Treasurer of Cook County, Illinois, and *ex-officio* County Collector of Cook County, Illinois, and *ex-officio* Town Collector of the Town of North Chicago, and THE CITY OF CHICAGO, Defendants.

It is hereby stipulated between Samuel B. Raymond, County Treasurer of Cook County, Illinois, and *ex-officio* County Collector of Cook County, Illinois, and John J. Hanberg, his successor as Treasurer of Cook County, Illinois, and *ex-officio* County Collector of Cook County, Illinois, and *ex-officio* Town Collector of the Town of North Chicago, and The City of Chicago, appellants, and Chicago Consolidated Traction Company, appellee, that a complete transcript of the Record in the case of the Chicago Union Traction Company *vs.* Samuel B. Raymond, County Collector *et al.*, No. 26609, in the Circuit Court of the United States, for the Northern District of Illinois, as per præcipe now on file with the Clerk of said Court, shall be filed in the Supreme Court of the United States by counsel for appellants.

197 And it is further stipulated that the Clerk of said Circuit Court may prepare and transmit to the Clerk of the Supreme Court of the United States at Washington, D. C., the following pleadings, proceedings and papers, which are different in this cause from the corresponding pleadings, proceedings and papers in said cause of the Chicago Union Traction Company *vs.* Samuel B. Raymond *et al.*, No. 26609:

1st. Bill of Complaint, filed February 13th, 1902.

2nd. Answer of the defendants, filed June 28th, 1902;

3rd. Master's report, filed June 9th, 1902, together with the depositions of all witnesses filed on said 9th day of June 1902, and attached to said Master's report, together with all exhibits accompanying the same;

4th. Answer of City of Chicago, filed May 19th, 1906;

5th. Final decree, entered July 25, 1906;

6th. Order entered August 10th, 1906, correcting final decree as of July 25th, 1906;

7th. Petition for appeal and assignment of erors of defendants, filed August 10th, 1906;

8th. Appeal bond of defendants, filed September 5th, 1906;

9th. Pages — to —, both inclusive, of the deposition of witnesses

and exhibits accompanying the Master's report filed in the cause of Chicago Consolidated Traction Company *vs.* Samuel B. Raymond *et al.*, No. 26,610.

And, inasmuch as many of the papers, pleadings, proceedings, and orders in this cause are identical with the corresponding papers, pleadings, proceedings and orders in said cause of the Chicago Union Traction Company *vs.* Samuel B. Raymond *et al.*

198 Now, it is hereby further agreed that for the purpose of considering this appeal, the Transcript of the Record in this cause to be used in the Supreme Court of the United States shall consist of the papers, pleadings, proceedings and orders contained in the Transcript of the Record filed in the said cause of the Chicago Union Traction Company *vs.* Samuel B. Raymond *et al.*, in the Supreme Court of the United States, which it is hereby agreed is identical with the corresponding pleadings, papers, proceedings and orders had in this cause, except in so far as the transcript in this cause has been made up by filing a transcript of the papers, records, proceedings and orders above specifically enumerated. Provided, however, that either party hereto may at any time take up to said Supreme Court by Supplemental Transcript of the Record, any and all other papers, pleadings, proceedings or orders, had in this cause in the said Circuit Court and not above specifically enumerated.

And it is further stipulated that the printed Transcript of the Record in this cause may be made up as follows: the pleadings, proceedings and papers in this cause shall be printed in their order, except where such pleadings, proceedings or papers consist of the record filed in the said cause of the Chicago Union Traction Company *vs.* Samuel B. Raymond *et al.*, when, instead of printing the said record of said last mentioned cause in full in the places where the same belongs, reference shall be made to the page in the printed transcript of the Record in said cause of the Chicago Union Traction Company *vs.* Samuel B. Raymond *et al.*, on which is printed said corresponding pleading, proceeding or paper, and a complete printed transcript of the record in said cause of the Chicago Union

199 Traction Company *vs.* Samuel B. Raymond *et al.* shall be attached to and bound in with said printed Transcript of the Record in this cause.

CHICAGO CONSOLIDATED TRACTION COMPANY,
By W. W. GURLEY, *Its Solicitor.*
CITY OF CHICAGO.
SAMUEL B. RAYMOND,
County Collector, and all Other Defendants,
By HARRY A. LEWIS,
WM. F. STRUCKMANN,
JAMES HAMILTON LEWIS AND
DAVID K. TONE, *Their Solicitors.*

(Endorsed:) Filed Sep. 26, 1906. Marshall E. Sampsell, Clerk.

200 And on to-wit: the twenty-sixth day of September 1906, there was filed in the clerk's office of said Court in said entitled cause a certain Stipulation extending time to file transcript of record in the Supreme Court, Said Stipulation is in words and figures following to-wit:

Stipulation Extending Time to File Transcript of Record.

In the Circuit Court of the United States, Northern District of Illinois, Eastern Division.

No. 26610.

CHICAGO CONSOLIDATED TRACTION COMPANY, Complainant,
vs.
SAMUEL B. RAYMOND ET AL., Defendants.

It is hereby stipulated between the parties to the above entitled cause, by their respective counsel, that the defendants' and appellant's time for filing a transcript of record in the above entitled cause in the Supreme Court of the United States, be extended for twenty (20) days, that is, up to and including the 29th day of September, 1906.

W. W. GURLEY,
Counsel for Complainant.
HARRY A. LEWIS,
WM. F. STRUCKMANN,
JAMES HAMILTON LEWIS AND
DAVID K. TONE,
Counsel for Defendants.

(Endorsed:) Filed Sept. 26, 1906. Marshall E. Sampsell, Clerk.

201 NORTHERN DISTRICT OF ILLINOIS, *Eastern Division, ss:*

I, Marshall E. Sampsell, Clerk of the Circuit Court of the United States for the Northern District of Illinois, do hereby certify the above and foregoing to be a true and complete transcript of the proceedings had of record in said Court made in accordance with Stipulation filed in the cause entitled Chicago Consolidated Traction Company, Complainant, *vs.* Samuel B. Raymond, County Treasurer of Cook County, Illinois, and *ex-officio* County Collector, Cook County, Illinois, and John J. Hanberg, his successor as County Treasurer of Cook County, Illinois, and *Ex-officio* County Collector of Cook County, Illinois, and *ex-officio* Town Collector of the Town of North Chicago and The City of Chicago, Defendants, General Number 26,610, as the same appear from the original records and files of said Court now remaining in my custody and control.

In Testimony Whereof, I have hereunto set my hand and affixed

the seal of said Court at my office in the City of Chicago, in said District, this 27th day of September, 1906.

[Seal Circuit Court U. S., Northern Dist. Illinois. 1855.]

MARSHALL E. SAMPSELL, *Clerk*.

Endorsed on cover: File No. 20,395. N. Illinois C. C. U. S. Term No. 430. Samuel B. Raymond, county treasurer of Cook county, Illinois, and *ex-officio* county collector of Cook county, Illinois; John J. Hanberg, his successor as such county treasurer and county collector, *et al.*, appellants, *vs.* Chicago Consolidated Traction Company. Filed October 2d, 1906. File No. 20,395.

IN THE

SUPREME COURT OF THE UNITED STATES,

OCTOBER TERM, A. D. 1906.

Samuel B. Raymond, County Treasurer of Cook County, Illinois, *et al.*, *Appellants*,
vs.
Chicago Consolidated Traction Company, *Appellee.*
No. 430.

NOTICE OF MOTION TO ADVANCE AND SET DOWN FOR HEARING.

To:

W. W. GURLEY,
Solicitor for Chicago Consolidated Traction Company.

Please take notice that on Monday, the 10th day of December, 1906, we shall appear before the Supreme Court of the United States in the City of Washington, D. C., at the opening of court on said day, or as soon thereafter as counsel can be heard, and move that the above entitled cause be taken up out of its order upon the docket of said court and advanced and set down for hearing upon some particular day of this term of said court, to be fixed by said court.

A copy of said motion, embodying the reasons in support thereof, together with a printed copy of the final decree entered in said cause is herewith handed you, which will be filed with the clerk of said court.

HARRY A. LEWIS,
WILLIAM F. STRUCKMANN,
JAMES HAMILTON LEWIS, and
DAVID K. TONE,
Solicitors for Appellants.

Received a copy of the above notice and of said motion and final decree this ..... day of December, A. D. 1906.

IN THE

SUPREME COURT OF THE UNITED STATES,

OCTOBER TERM, A. D. 1906.

Samuel B. Raymond, County Treasurer of Cook County, Illinois, *et al.*, *Appellants*,
vs.
Chicago Consolidated Traction Company, *Appellee.*
No. 430.

MOTION TO ADVANCE AND SET DOWN FOR HEARING.

Now come Samuel B. Raymond, County Treasurer of Cook County, etc., and John J. Hanberg, his successor, etc., and The City of Chicago, appellants in the above entitled cause, and move the court that this cause be taken up out of its order upon the docket of this court and be advanced and set down for hearing on some particular day of this term, to be fixed by this court.

In support of said motion, the said appellants beg leave to submit the following reasons:

First: It appears from the final decree in this cause (Original Record, page 123, a printed copy of which final decree is filed herewith, pages 1 to 5) that the Circuit Court, by said final decree, perpetually enjoined an assessment on the capital stock and franchises of the complainant, made by the State Board of Equalization of the State of Illinois,

and aggregating $3,531,487, and the taxes levied pursuant thereto, and it therefore appears that the proceeding in the court below was one which enjoined the revenue officers of the State of Illinois from collecting an assessment made under the authority of the laws of the State of Illinois.

Second: It appears from the final decree in this cause, above referred to, that a question of momentous importance to the People of the State of Illinois, and a constitutional question of great importance in reference to the jurisdiction of a federal court to enjoin state officials from enforcing the revenue laws of the state is involved in this appeal.

Third: It appears from the final decrees entered in each of the seven causes that were heard together in the court below (printed copies of which final decrees are filed in each of the said respective causes), that all of said causes involve the same questions, and that by the action of the Circuit Court in enjoining the collection of the capital stock assessments made against each of said corporations, respectively, about $2,000,000 of the taxes levied by the State Board of Equalization of the State of Illinois for the year 1901 was perpetually enjoined, and that by reason of the vast sum of money so enjoined, and by reason of the importance of securing a speedy determination of the validity of said assessments, this cause should be advanced and heard out of its regular order.

HARRY A. LEWIS,
WILLIAM F. STRUCKMANN,
JAMES HAMILTON LEWIS, and
DAVID K. TONE,
Solicitors for Appellants.

Office Supreme Court, U. S.
FILED.
DEC 11 1906
JAMES H. McKENNEY,
CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, A. D. 1906.

No. 480 121

SAMUEL B. RAYMOND, County Treasurer of Cook County, Illinois, et al.,
Appellants,

vs.

CHICAGO CONSOLIDATED TRACTION COMPANY,
Appellee.

COPY OF FINAL DECREE AND OF STIPULATION.

Appeal from the Circuit Court of the United States for the Northern District of Illinois.

IN THE CIRCUIT COURT OF THE UNITED STATES,
NORTHERN DISTRICT OF ILLINOIS,
EASTERN DIVISION.

Chicago Consolidated Traction Company,
Complainant,
vs.
Samuel B. Raymond *et al.*,
Defendants.
} In Equity. No. 26,610

DECREE.

Record.

This cause came on to be heard further at this
123 term, and was argued by counsel, and thereupon upon consideration thereof,

IT IS ORDERED that all objections and exceptions to the Master's Reports be and the same are hereby overruled, and that the Master's Reports and each of them be and they are hereby approved and confirmed; and the court finds that all of the material allegations of the bill of complaint are sustained by the evidence and that the equities of the case are with the complainant; and thereupon the court doth ORDER, ADJUDGE AND DECREE AS FOLLOWS:

That the assessment made by the State Board of Equalization of the State of Illinois at its session in 1901, against the complainant, the Chicago Consolidated Traction Company upon its capital stock for the year 1900, amounting to $2,122,187

And upon the capital stock of the Chicago Electric Transit Company, amounting to 234,400

And upon the capital stock of the Chicago and Jefferson Urban Transit Company, amounting to 61,600

And upon the capital stock of the Cicero and Proviso Street Railway Company, amounting to	422,200
And upon the capital stock of the Evanston Electric Railway Company, amounting to	36,000
And upon the capital stock of the North Chicago Electric Railway Company, amounting to	193,600
And upon the capital stock of the North Side Electric Street Railway Company, amounting to	46,000
And upon the capital stock of the Ogden Street Railway Company, amounting to.	170,000
And upon the capital stock of the Chicago North Shore Street Railway Company, amounting to	245,500
Such assessments in the aggregate amounting to	$3,531,487,

was made under the coercion and influence of a writ of mandamus issued by the Circuit Court of Sangamon County in the State of Illinois and did not represent the real and independent judgment of the State Board of Equalization, and that the assessments made by the State Board of Equalization at its meeting held in 1901 upon the capital stock of said complainant, and upon the capital stock of the said corporations hereinabove referred to (being grantor and lessor corporations of said Chicago Consolidated Traction Company), and upon the capital stock of the other corporations named in the writ of mandamus above mentioned, for the year 1900, were in fact made upon a materially different basis from that upon which the capital stock of all other corporations of the same class were assessed by the State Board of Equalization for the year 1900, and

also upon a basis materially different from that upon which other taxable property in the State of Illinois was assessed for the year 1900; that said assessment made in 1901 on the capital stock of the complainant and its aforesaid grantor and lessor corporations was made under the coercion and influence of said writ of mandamus without the exercise or application of the judgment of the State Board of Equalization or the members thereof to the ascertainment of the value of said capital stock, and without the State Board of Equalization, either in fact or in form, taking into consideration the basis upon which all other taxable property in the State of Illinois was assessed and taxed for the year 1900, and without in fact or in form equalizing the value or assessment of the capital stock of the said complainant for the year 1900 with all or any of the assessments made upon the other taxable property in the State of Illinois for the year 1900, with the result that the said assessment on the capital stock of complainant and upon that of its aforesaid grantor and lessor corporations made in the year 1901 for the year 1900, was made on a much higher basis than that upon which the other taxable property of the State of Illinois was assessed and taxed for the year 1900; and that such assessment upon said capital stock for the year 1900 was and is unjust and inequitable; that the making of such assessment as aforesaid in 1901 upon the capital stock of the said complainant and upon that of its aforesaid grantor and lessor corporations and the extension of the taxes thereon and the attempt to enforce the payment of the taxes so extended from complainant and

from its aforesaid grantor and lessor corporations, was and is a violation of the Fourteenth Amendment to the Constitution of the United States, and that the attempt to enforce the collection from said complainant and from its aforesaid grantor and lessor corporations of the taxes extended on said reassessment will, unless restrained, result in a multiplicity of suits.

The court further finds that the said complainant, the said Chicago Consolidated Traction Company, has heretofore paid to the County Treasurer of Cook County, the capital stock tax originally assessed by the State Board of Equalization for the year 1900, being the amount of $8,817, which is found and decreed by the court to be all that complainant should equitably be required to pay as a capital stock tax for the year 1900 both for itself and for its grantor and lessor corporations.

IT IS THEREFORE FURTHER ORDERED, ADJUDGED AND DECREED that the said assessment of $3,531,487 on the capital stock of the complainant and on the capital stock of the aforesaid grantor and lessor corporations of complainant made by the State Board of Equalization in the year 1901 for the year 1900 and the taxes levied and extended thereon and now spread upon the books of the tax collection agency of the County of Cook and State of Illinois for collection, be and they are and each of them is illegal, null and void, and that the defendants, Julius Solomon, Town Collector of the Town of North Chicago, and his successor and successors in office as such collector, and Samuel B. Raymond, County Treasurer of Cook County, Illinois, and *ex-officio*

County Collector of said County, his successor and successors in office as such County Treasurer and *ex-officio* County Collector, and the defendant the City of Chicago, and each of them, and each and every of their respective agents, deputies, servants, attorneys and representatives be and they are and each of them is hereby perpetually enjoined and restrained from in any wise levying or collecting or in any manner attempting, directly or indirectly, to levy or collect or to enforce against the complainant, or against any of its property, or against the aforesaid grantor and lessor corporations of the complainant, or against any of their property or the property of either of them, said tax or taxes, or any or either of them or any part thereof.

It is further ordered that the costs be paid by complainant.

P. S. Grosscup.

IN THE CIRCUIT COURT OF THE UNITED STATES,
NORTHERN DISTRICT OF ILLINOIS,
EASTERN DIVISION THEREOF.

Chicago Consolidated Traction Company, *Complainant*, *vs.* Samuel B. Raymond, County Treasurer of Cook County, Illinois, and *ex-officio* County Collector of Cook County, Illinois, and John J. Hanberg, his successor as County Treasurer of Cook County, Illinois, and *ex-officio* County Collector of Cook County, Illinois, and *ex-officio* Town Collector of the Town of North Chicago, and the City of Chicago, *Defendants.*	In Chancery. No. 26,610.

IT IS HEREBY STIPULATED between Samuel B. Raymond, County Treasurer of Cook County, Illinois, and *ex-officio* County Collector of Cook County, Illinois, and John J. Hanberg, his successor as Treasurer of Cook County, Illinois, and *ex-officio* County Collector of Cook County, Illinois, and *ex-officio* Town Collector of the Town of North Chicago, and the City of Chicago, appellants, and Chicago Consolidated Traction Company, appellee, that a complete transcript of the record in the case of the *Chicago Union Traction Company* v. *Samuel B. Raymond, County Collector, et al.*, No. 26,609, in the Circuit Court of the United States, for the Northern District of Illinois, as per præcipe now on file with the clerk of said court, shall be filed in the Supreme

Court of the United States by counsel for the appellants.

And it is Further Stipulated that the clerk of said Circuit Court may prepare and transmit to the clerk of the Supreme Court of the United States, at Washington, D. C., the following pleadings, proceedings and papers, which are different in this cause from the corresponding pleadings, proceedings and papers in said cause of the *Chicago Union Traction Company* v. *Samuel B. Raymond et al.*, No. 26,609:

1st. Bill of complaint, filed February 13, 1902;

2nd. Answer of the defendants, filed June 28, 1902;

3rd. Master's report, filed June 9, 1902, together with the depositions of all witnesses filed on said 9th day of June, 1902, and attached to said Master's report, together with all exhibits accompanying the same;

4th. Answer of City of Chicago, filed May 19, 1906;

5th. Final decree, entered July 25, 1906;

6th. Order entered August 10, 1906, correcting final decree as of July 25, 1906;

7th. Petition for appeal and assignment of errors of defendants, filed August 10, 1906;

8th. Appeal bond of defendants, filed September 5, 1906;

9th. Pages ..... to ....., both inclusive, of the depositions of witnesses and exhibits accompanying the Master's report filed in the cause of *Chicago Consolidated Traction Company* v. *Samuel B. Raymond et al.*, No. 26,610,

And, inasmuch as many of the papers, pleadings, proceedings, and orders in this cause are identical with the corresponding papers, pleadings, proceedings and orders in said cause of the *Chicago Union Traction Company* v. *Samuel B. Raymond et al.*

Now, it is Hereby Further Agreed that for the purpose of considering this appeal, the transcript of the record in this cause to be used in the Supreme Court of the United States shall consist of the papers, pleadings, proceedings and orders contained in the transcript of the record filed in the said cause of the *Chicago Union Traction Company* v. *Samuel B. Raymond et al.*, in the Supreme Court of the United States, which it is hereby agreed is identical with the corresponding pleadings, papers, proceedings and orders had in this cause, except in so far as the transcript in this cause has been made up by filing a transcript of the papers, records, proceedings and orders above specifically enumerated. Provided, however, that either party hereto may at any time take up to said Supreme Court by supplemental transcript of the record, any and all other papers, pleadings, proceedings or orders, had in this cause in the said Circuit Court and not above specifically enumerated.

And it is Further Stipulated that the printed transcript of the record in this cause may be made up as follows: The pleadings, proceedings and papers in this cause shall be printed in their order, except where such pleadings, proceedings or papers consist of the record filed in the said cause of the *Chicago Union Traction Company* v. *Samuel B. Raymond et al.*, when, instead of printing the said record of said last mentioned cause in full in the

places where the same belongs, reference shall be made to the page in the printed transcript of the record in said cause of the *Chicago Union Traction Company* v. *Samuel B. Raymond et al.*, on which is printed said corresponding pleading, proceeding or paper, and a complete printed transcript of the record in said cause of the *Chicago Union Traction Company* v. *Samuel B. Raymond et al.* shall be attached to and bound in with said printed transcript of the record in this cause.

CHICAGO CONSOLIDATED TRACTION COMPANY,

By W. W. GURLEY,
Its Solicitor.

CITY OF CHICAGO, SAMUEL B. RAYMOND, COUNTY COLLECTOR, AND ALL OTHER DEFENDANTS,

By HARRY A. LEWIS,
WILLIAM F. STRUCKMANN,
JAMES HAMILTON LEWIS and
DAVID K. TONE,
Their Solicitors.

IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1906.

No. 430

SAMUEL B. RAYMOND, County Treasurer of Cook County, Illinois, and *ex officio* County Collector of Cook County, Illinois; JOHN J. HANBERG, his Successor as such County Treasurer and County Collector et al.,

Appellants,

vs.

CHICAGO CONSOLIDATED TRACTION COMPANY.

Appeal from the Circuit Court of the United States for the Northern District of Illinois.

APPELLANTS' BRIEF.

STATEMENT OF THE CASE.

On the 15th day of January, 1903, appellee filed its bill of complaint (Trans., 2) against Samuel B. Raymond, County Treasurer of Cook County, Illinois, and ex-officio County Collector of said county, and Julius Salomon, Town Collector of the Town of North Chicago in said county, seeking to enjoin said officials from enforcing against appellee, a certain tax levied pursuant to an assessment made upon

the capital stock and franchises of appellee, by the State Board of Equalization of the State of Illinois on the 22nd of November, 1901, as and for the first of April, 1900.

The appellee was a corporation engaged in the business of operating street railways, in the City of Chicago, on the first day of April, 1900.

The statutes of the State of Illinois provide that a County Board of Assessors, consisting of three persons shall assess the tangible property of corporations doing business within the State of Illinois; and the Illinois law further provides that the capital stock and franchises of corporations pursuing the kind of business that appellee was engaged in shall be assessed by the State Board of Equalization. The members of the said State Board of Equalization in assessing the capital stock and franchises of corporations act as original assessors.

Said Board is also charged with the duty of equalizing the value of real and personal property between the several counties, after said values have been certified by the State Auditor to the county officers. All assessments made by said Board as original assessors, are certified to the county officials, and used as the basis of extending the taxes against the corporation so assessed, on the amount so certified.

Appellee was required, under the laws of the State of Illinois, to deliver to the county assessors, for the year 1900, a statement showing the market value, or if no market value then the actual value, of its shares of stock. This statement was to be forwarded to the State Board of Equalization and used by said Board in making an assessment of the

capital stock and franchises of appellee. Appellee made out a statement, which was duly forwarded to the State Board, but that statement contained no information in reference to either the market value or the actual value of appellee's shares of stock.

The Illinois law also provided that if the corporation failed to make out a statement, it should be the duty of the County Assessors to make out a schedule getting the information called for from the best obtainable sources.

The State Board met for its annual session September 11, 1900, but took no steps towards assessing the capital stock and franchises of appellee. On November 10, 1900, the State's Attorney of Sangamon County filed a petition for a mandamus on the relation of certain tax payers, in the Circuit Court of said county, against said State Board of Equalization, alleging that said Board wilfully neglected and refused, during the year 1899, to assess the capital stock and franchises of appellee, and numerous other corporations in said petition named, and that said Board claimed and pretended that it would, at its then session, also refuse to assess the capital stock and franchises of said corporations, or would assess the same at such a figure as to produce a mere nominal tax. Said petition set forth the market value of said stock and that the same was well known to said Board, and said petition prayed that a writ of mandamus might issue, directing said Board to make an assessment of the capital stock and franchises of appellee.

On December 3, 1900, said State Board of Equalization adjourned, and on that day said Board, for

the purpose of defeating the prosecution of said mandamus suit, made a mere nominal assessment of the capital stock and franchises of appellee. Said assessment was certified to the County Clerk, and the taxes extended pursuant thereto paid before said mandamus suit was tried.

During the month of April, 1901, said mandamus suit was tried in the Circuit Court, and on the first of May, 1901, a judgment was entered by that court awarding a writ of mandamus as prayed for in said petition.

An appeal was taken from said judgment by the State Board, and on the 24th day of October, 1901, the Supreme Court of Illinois handed down an opinion affirming said judgment. *The State Board of Equalization* v. *People,* 191 Ill., 528. The Supreme Court of Illinois held that the assessment of the capital stock and franchises of appellee made by the Board on December 3, 1900, was so grossly inadequate that it was for that reason fraudulent and void.

Thereafter the mandate of the Supreme Court was duly filed in the Circuit Court, and on the 2nd day of November, 1901, there issued a writ of mandamus against the members of the State Board of Equalization, commanding them to assess the capital stock and franchises of the appellee and certain corporations therein named, and in obedience to said writ of mandamus, the said State Board of Equalization on the 22nd of November, 1901, made an assessment, amounting to the sum of $3,531,487.00, on the capital stock and franchises of appellee as and for the 1st day of April, 1900; the taxes amounting to the sum of $283,754.98 were duly extended by the County

Clerk on said assessment, and this bill of complaint is filed to enjoin the collection of said taxes, and the enforcement of said assessment.

The various allegations of appellee's bill of complaint, stripped of unnecessary verbiage, amount to this: That the Constitution and Laws of the State of Illinois require uniformity and equality in the assessment of all property within the state, and that the State Board of Equalization, in violation of those constitutional and statutory provisions, made an assessment upon the capital stock and franchises of appellee that was unequal, discriminating and unfair, and that the above result was brought about in the following manner:

First. The assessment of other property in the state, including that of railroad and telegraph companies and other corporations for the year 1900, as finally equalized by the State Board of Equalization, did not exceed one-fifth of 70 per cent of its cash value, whereas the capital stock and franchises of appellee and the other corporations that were made defendants to said mandamus suit were assessed at one-fifth of their full cash values.

Second. That the assessment of the capital stock and franchises of appellee and the other corporations above named was excessive, unreasonable and much higher than the assessments made upon the property of other persons and corporations for the same year.

Third. That the assessment of the capital stock and franchises of appellee, made by the State Board on December 3, 1900, and the payment in January, 1901, of the taxes extended pursuant to said assess-

ment, constituted a full discharge by the appellee of all taxes that could be levied under the laws of the State of Illinois, against its capital stock and franchises.

Fourth. That the members of the State Board of Equalization, in making the assessment complained of, did not exercise their own independent judgment, but believed that they were coerced by the writ of mandamus of the Circuit Court, into making the assessment, for the amount and in the manner, returned.

By reason of the foregoing proceedings, it was charged in the bill of complaint that the appellee was deprived of its property without due process of law, and denied the equal protection of the laws, in violation of the Fourteenth Amendment.

A demurrer was filed to appellee's bill of complaint, which demurrer was overruled by the court, and subsequent thereto the defendants filed their answer (Trans., 23), admitting that the assessment was made and the taxes extended pursuant thereto as alleged in appellee's bill of complaint, but denying specifically all charges of fraud, illegality, inequality and discrimination. A replication was filed to said answer and the case was thereafter heard upon proof offered by the respective parties before Master in Chancery Bishop of said court (C. U T. Co. Trans., 98).

On the 19th day of May, 1906, the City of Chicago filed an intervening petition alleging that it was the beneficial owner of the greater portion of the taxes here in controversy, and asking that it be made a party to this cause, and that it be permitted to file

an answer, and thereafter (C. U. T. Co. Trans., 1267) an order was entered granting the prayer of said petition.

A vast amount of evidence was taken before the Master in behalf of the appellee, but an examination of this record will disclose that all of that evidence, in so far as it was material to the issues in this case, may be classified under the following subdivisions:

1. The testimony of four out of twenty of the members of the State Board of Equalization, who made the assessments complained of in reference to the operation of their own minds at the time the assessments were made.

2. Certain extracts from the reports of the Railroad and Warehouse Commissioners for the State of Illinois and the reports of the Board of Agriculture of the State of Illinois.

3. Certain extracts from the records of the Union Stock Yards and Transit Company in reference to the value of horses, cattle and hogs within the State of Illinois and certain extracts from Brown's Directory of American Gas Companies, both of said publications being private compilations.

4. A statement purporting to show the number of horses, cattle and hogs in the State of Illinois, returned for taxation in the year 1900 by the local assessors, as compared with the number purported to be shown in the state by the United States Census Report of 1890; and certain statements purporting to show the aggregate assessments and the total value of the property assessed in the State of Illinois and Cook County from 1873 to 1900.

5. The records of the proceedings of the State

Board of Equalization showing the assessments made on the capital stock and franchises of the corporations above named during the years 1899, 1900 and 1901, and certain extracts from the records of the board for prior years.

6. The testimony of the officers and agents of the complainant corporations in reference to the amounts and values of their properties in the City of Chicago on the 1st day of April, 1900.

The first four items of evidence above quoted were received in evidence over the objection of appellants' counsel.

On the 25th day of April, 1902, when the application of appellee for a preliminary writ of injunction came on to be heard, the court entered an order (C. U. T. Co. Trans., 3) that the capital stock and franchises of appellee should be assessed by capitalizing the true net income of appellee for the fiscal year covering April 1, 1900, upon a basis of six per cent, and ordered said cause referred to a Master, and directed said Master to ascertain the amount of additional tax to be paid by appellee pursuant to said plan.

The Master filed a preliminary report (Trans., 31) in which said Master reported that there was no amount that appellee should pay in addition to the tax previously paid and that said sum originally paid was in full of all taxes to be paid by appellee upon its capital stock and franchises for the year 1900.

On November 19, 1904, the Master filed his final report in this case (C. U. T. Co. Trans., 97), in which he found that the material allegations of complainant's bill had been proved and that no further

taxes were due from appellee under the plan of assessment promulgated by the Circuit Court.

To that report exceptions were duly filed and thereafter said cause came on to be heard before the court, and on the 25th of June, 1906, the Circuit Court handed down an opinion (C. U. T. Co., Trans., 1277), in which he held that the material allegations of appellee's bill of complaint had been proved; that the payment originally made was all the taxes that appellee should pay and that all of the appellants be perpetually enjoined from collecting or attempting to collect the balance of said taxes, amounting to the sum of $274,937.98.

From that decree an appeal was prayed by the appellants to this court.

Appellants' various assignment of errors have been classified in the specifications of errors under four subdivisions:

I. The Circuit Court erred in refusing to dismiss this cause for want of jurisdiction.

II. The Circuit Court erred in admitting incompetent evidence in behalf of appellee and in refusing to hold that there was no competent evidence tending to prove the allegations of appellee's bill of complaint.

III. The Circuit Court erred in not holding that appellee has not made out a case entitling it to relief in a court of equity.

IV. The Circuit Court erred in enjoining the collection of the taxes in question without requiring appellee to pay $274,937.98 in addition to the amount already paid.

The various assignments of error will be considered in our argument under the same subdivisions.

SPECIFICATIONS OF ERROR.

I.

The Circuit Court erred in refusing to dismiss this cause for want of jurisdiction.

First. The said Circuit Court erred in failing and refusing to dismiss this cause for want of jurisdiction in a Federal Court, appearing upon the face of complainant's bill of complaint.

Second. The said Circuit Court erred in failing to dismiss complainant's bill of complaint for want of jurisdiction, because the undisputed evidence in this record shows that a Circuit Court of the United States is without jurisdiction to hear and determine the matters and things charged in complainant's bill.

Third. The said Circuit Court erred in refusing to hold that the allegations of the complainant's bill of complaint show that complainant has not been denied by the State of Illinois or its officers, any right, privilege or immunity guaranteed to the complainant by the Fourteenth Amendment to the Constitution of the United States.

Fourth. The said Circuit Court erred in refusing to hold that the allegations of complainant's

bill of complaint show that the complainant has not been deprived of its property without due process of law, in violation of the Constitution of the United States.

Fifth. The said Circuit Court erred in refusing to hold that the State of Illinois had not denied to the complainant the equal protection of its laws within its jurisdiction.

Sixth. The said Circuit Court erred in refusing to find that the sole grievance complained of in complainant's bill of complaint is that the officers of the State of Illinois charged with the duty of making a fair and equal assessment of the complainant's capital stock, have made an assessment that is unfair and unequal, contrary to and in violation of the Constitution and the Laws of the State of Illinois; and said Circuit Court likewise erred in assuming and retaining jurisdiction of this cause, when, upon the face of complainant's bill of complaint, it appears that the said Circuit Court was without jurisdiction.

Seventh. The said Circuit Court erred in refusing to hold that inasmuch as the complainant and defendants were all citizens of and residents of the State of Illinois, a Federal Court had no jurisdiction in this cause to hear and determine the fairness, equality or is regularity of the assessment made against the complainant, and its said lessor corporations, and the said Circuit Court erred in refusing to dismiss this cause for want of jurisdiction.

II.

The Circuit Court erred in admitting incompetent evidence in behalf of appellees, and in refusing to hold that there was no competent evidence tending to prove the allegations of appellee's bill of complaint.

Ninth. The said Circuit Court erred in overruling the objections and exceptions and each and every of said objections and each and every of said exceptions to the said Master's reports and to each of them.

Tenth. The said Circuit Court erred in approving and confirming the Master's reports and each of them, filed in this cause.

Eleventh. The said Circuit Court erred in failing and refusing to sustain the objections and each and every of the same filed by the defendants to said Master's reports and to each of said reports.

Twelfth. The said Circuit Court erred in finding that all of the material allegations of the bill of complaint are sustained by the evidence and likewise in finding that the equities of the case are with the complainant.

Thirteenth. The said Circuit Court erred in failing to find that the material allegations of the bill of complaint in this cause have not been proved by any competent evidence.

Fourteenth. The said Circuit Court erred in finding that the assessment made by the State Board of Equalization of the State of Illinois at its session in 1901 against the complainant, the Chicago Consolidated Traction Company upon its capital stock

for the year 1900, amounting to $2,122,187, and upon the capital stock of the Chicago Electric Transit Company, amounting to $234,400, and upon the capital stock of the Chicago and Jefferson Urban Transit Company, amounting to $61,600, and upon the capital stock of the Cicero and Proviso Street Railway Company amounting to $422,200, and upon the capital stock of the Evanston Electric Railway Company, amounting to $36,000, and upon the capital stock of the North Chicago Electric Railway Company amounting to $193,600, and upon the capital stock of the North Side Electric Street Railway Company, amounting to $46,000, and upon the capital stock of the Ogden Street Railway Company, amounting to $170,000, and upon the capital stock of the Chicago North Shore Street Railway Company, amounting to $245,500, such assessments in the aggregate amounting to $3,531,487, was made under the coercion and influence of a writ of mandamus, issued by the Circuit Court of Sangamon County, in the State of Illinois, and did not represent the real and independent judgment of the said Board of Equalization.

Fifteenth. The said Circuit Court erred in failing and refusing to find that the assessment, amounting in the aggregate to $3,531,487, made by the State Board of Equalization of the State of Illinois at its session in 1901 against the complainant, The Chicago Consolidated Traction Company, upon its capital stock for the year 1900, and upon the capital stock of the grantor and lessor corporations of said Chicago Consolidated Traction Company, named in said decree, also for the year 1900, were each and every of them made by the said State Board of

Equalization in the exercise of its own judgment and upon its official responsibility.

Sixteenth. The said Circuit Court erred in finding that the assessments made by the State Board of Equalization at its meeting, held in 1901, upon the capital stock of said complainant and upon the capital stock of the grantor and lessor corporations of said Chicago Consolidated Traction Company, and upon the capital stock of the other corporations for the year 1900, named in the writ of mandamus, issuing from the Circuit Court of Sangamon County, Illinois, were in fact made upon a materially different basis from that upon which the capital stock of all other corporations of the same class were assessed by the State Board of Equalization for the year 1900, and also upon a basis materially different from that upon which other taxable property in the State of Illinois was assessed for the year 1900.

Seventeenth. The said Circuit Court erred in refusing and failing to find that the only competent evidence contained in the record in this cause showed that the assessments made by the State Board of Equalization at its meeting held in 1901, upon the capital stock of said complainant and upon the capital stock of the grantor and lessor corporations of said Chicago Consolidated Traction Company, in said decree mentioned, and upon the capital stock of the other corporations for the year 1900, named in the writ of mandamus issuing from the Circuit Court of Sangamon County, Illinois, were in fact made upon the same or a similar basis, as that upon which the capital stock of all other corporations of the same class were assessed by the State

Board of Equalization for the year 1900, and also that said assessments as to each of said corporations were made upon the same or a similar basis upon which all other taxable property in the State of Illinois was assessed for the year 1900.

Eighteenth. The said Circuit Court erred in finding that said assessment made in 1901 on the capital stock of complainant and its grantor and lessor corporations, named in said decree, was made under the coercion and influence of a writ of mandamus, issuing from the Circuit Court of Sangamon County, Illinois, without the exercise or application of the judgment of the State Board of Equalization or the members thereof, to the ascertainment of the value of said capital stock, and without the State Board of Equalization, either in fact or in form, taking into consideration, the basis upon which all other taxable property in the State of Illinois was assessed and taxed for the year 1900 and without in fact or in form equalizing the value or assessment of the capital stock of said complainant for the year 1900 with all or any of the assessments made upon the other taxable property in the State of Illinois for the year 1900, with the result that said assessment made on the capital stock of the complainant and upon that of its aforesaid grantor and lessor corporations, made in the year 1901 for the year 1900, was made on a much higher basis than that upon which the other taxable property of the State of Illinois was assessed and taxed for the year 1900.

Nineteenth. The said Circuit Court erred in refusing and failing to find that the assessment made in the year 1901 on the capital stock of the com-

plainant and its grantor and lessor corporations, named in said decree, were made without any coercion and in the exercise of the independent judgment of the State Board of Equalization and the members thereof, for the purpose of ascertaining the fair value of the capital stock of said corporations and each of them, and that said assessment was obtained and resulted from the said State Board of Equalization equalizing the value and assessment of the capital stock of said complainant and its grantor and lessor corporations for the year 1900 with all of the assessments made upon other taxable property in the State of Illinois, and that the assessment so arrived at was just and fair to the said complainant and its lessor corporations.

Twentieth. The said Circuit Court erred in finding that the making of the assessment for the year 1900 upon the capital stock of said complainant, and upon that of its grantor and lessor corporations, named in said decree, and the extension of the taxes thereon, and the attempt to enforce the payment of the taxes so extended from complainant and from its aforesaid grantor and lessor corporations was and is a violation of the Fourteenth Amendment to the Constitution of the United States.

Forty-third. The said Circuit Court erred in admitting and receiving in evidence, over the objection and exception of defendants' counsel, oral testimony for the purpose of explaining, varying and contradicting the official acts, records and proceedings of the State Board of Equalization for the years 1900 and 1901, wherein and whereby said Board made the assessment against the property of the complainant sought to be enjoined in this cause.

Forty-fourth. The said Circuit Court erred in refusing and failing to hold that parol evidence was incompetent, for the purpose of explaining, varying or contradicting the official acts, records and proceedings of the State Board of Equalization of the State of Illinois, in reference to the assessments on the capital stock of the complainant, made by the said board in the year 1901, for the year 1900.

Twenty-fourth. The said Circuit Court erred in admitting and receiving in evidence, over the objection and exception of defendants' counsel, the following testimony of Samuel M. Barnes, a member of the State Board of Equalization, of the State of Illinois, for the years 1900 and 1901: —

I heard the members of the State Board of Equalization discuss the remarks of the court on the application for an extension of time to make return to the writ of mandamus. My recollection of one remark that I heard was that it was a mere question of the Board's getting their pencils and getting to work and they ought to do it. I heard one of the Board say that the court was very vituperative in this matter. I think it was either Mr. Schaefer or Mr. Hopkins of the Committee on the Board who was over there listening to the court. The impression I got was very strongly fixed in my mind and it was that his attitude was intensely hostile to the Board and I was told by those who heard him that it was in the shape of a roast from start to finish as far as his manner was concerned. Of course, I cannot just quote the language he used, but rather his manner I was told was vituperative, absolutely so. I was told this by members of the State Board of Equalization who were present and heard the

remarks of the judge. The reassessment as we determined it, was made with a view to satisfying the court, the order of the court. We made no deduction, if I remember rightly, on account of that all of these Companies but two had in 1900 been assessed upon their capital stock. We did not take into consideration the fact, if it was a fact that other property in the state had not been assessed at the maximum more than 70 per cent of its value. The court, in his discussion, gave an illustration of the manner in which the assessment should be made and I think he made an example of the Gas Company here; in any event one of the companies he made an example of that and in that example he said just how the assessment should be made and as this was an order of the court, we followed that example that he gave in a general way, for all these assessments. Mr. Smith and Mr. Greenacre furnished these tables (referring to complainant's Exhibit A, 10/23/03) said document being a compilation of the value of the capital stock of said Companies, prepared by Miss Goggin and Miss Haley, as members of the Teachers' Federation. Our desire in making this reassessment was in order to satisfy the Circuit Court of Sangamon County, because it was not my judgment that it was a proper assessment. The general idea seemed to be with the committee on capital stock that the action of the committee was dictated by the court. It was discussed between the committee on capital stock at about the time the reassessment was reported to the Board and the first object to be attained was to satisfy the court. The assessments that were made subsequent to this assessment of 1900 were based

on what we believed to be the law and in a general way on the judgment of the members, that is on the real values. The assessment for 1901 we regarded as representing our real judgment and the other we did to satisfy the court. The restraining order issued by the court was dissolved on the 22nd of November, and I think it was a very short time after that on that day that we made our return to the writ.

Twenty-fifth. The said Circuit Court also erred in admitting in evidence, over the objection of defendants' counsel, the testimony of Frank P. Martin, a member of the State Board of Equalization, which was in substance the same as the testimony of said Barnes.

Twenty-sixth. The said Circuit Court erred in receiving in evidence, over the objection of defendants' counsel, the testimony of John S. Cruttenden, a member of the State Board, which was in substance the same as the testimony of said Barnes.

Twenty-seventh. The said Circuit Court erred in receiving in evidence, over the objection of defendants' counsel, the testimony of Louis D. Hirsheimer, a member of the State Board of Equalization, which was in substance the same as the testimony of said Barnes.

Twenty-ninth. The said Circuit Court erred in receiving in evidence, over the objection of the defendant, the report of the Railroad and Warehouse Commissioner of the State of Illinois for the year 1900, and the report of the Commissioner of Agriculture of the State of Illinois for the same year, and Brown's Directory of American Gas Companies.

Thirty-third. The said Circuit Court erred in admitting in evidence, over the exception of defendants, the statement, being Ward Exhibit C, purporting to show live stock returned for taxation in 1900 by local assessors as compared with live stock according to the U. S. Census returns.

III.

The Circuit Court erred in refusing to hold that appellee had not made out a case entitling it to relief in a court of equity.

Twenty-third. The said Circuit Court erred in ordering, adjudging and decreeing that the assessment of $3,531,487 on the capital stock of the complainant and on the capital stock of the aforesaid grantor and lessor corporations of complainant, made by the State Board of Equalization in the year 1901 for the year 1900, and the taxes levied and extended thereon and now spread upon the books of the tax collection agency of the County of Cook and State of Illinois, for collection, are, and each of them is, illegal, null and void, and that the defendants, Samuel B. Raymond, County Treasurer of Cook County, Illinois, and *ex-officio* County Collector of Cook County, Illinois, and Town Collector of the Town of North Chicago, and John J. Hanberg, his successor as County Treasurer of Cook County, Illinois, and *ex-officio* County Collector of said county, and *ex-officio* Town Collector of the Town of North Chicago, in said county, and his successor and successors in office as such County Treasurer and *ex-officio* County Collector and *ex-officio* Town Collector of said Town of

North Chicago, and the defendant, the City of Chicago, and each of them and each and every of their respective agents, deputies, servants, attorneys and representatives, be and are perpetually enjoined and restrained from in anywise levying or collecting or in any manner attempting, directly or indirectly, to levy or collect or to enforce against the complainant or against any of its property, or against the aforesaid grantor and lessor corporations of complainants or against any of their property, or the property of either of them, said tax or taxes or any or either of them or any part thereof.

IV.

The Circuit Court erred in enjoining the collection of the tax in question.

Twenty-first. The said Circuit Court erred in finding that the amount of taxes heretofore paid by the complainant to the County Treasurer of Cook County on the capital stock originally assessed by the State Board of Equalization for the year 1900, being the sum of $8,817 is all that complainant should equitably be required to pay as a capital stock tax for the year 1900, both for itself and for its grantor and lessor corporations.

Twenty-second. The said Circuit Court erred in not finding and decreeing, if said Circuit Court had jurisdiction of this cause, that the complainant should equitably be required to pay the entire assessment levied against the complainant and its grantor and lessor corporations for the year 1900 by the State Board of Equalization in the year 1901, amounting to the sum of $3,531,487.

Twenty-third. The said Circuit Court erred in ordering, adjudging and decreeing that the assessment of $3,531,487 on the capital stock of the complainant and on the capital stock of the aforesaid grantor and lessor corporations of complainant, made by the State Board of Equalization in the year 1901 for the year 1900 and the taxes levied and extended thereon and now spread upon the books of the tax collection agency of the County of Cook and State of Illinois, for collection, are, and each of them is, illegal, null and void, and that the defendants, Samuel B. Raymond, County Treasurer of Cook County, Illinois, and *ex-officio* County Collector of Cook County, Illinois, and Town Collector of the Town of North Chicago, and John J. Hanberg, his successor as County Treasurer of Cook County, Illinois, and *ex-officio* County Collector of said County and *ex-officio* Town Collector of the Town of North Chicago, in said County, and his successor and successors in office as such County Treasurer and *ex-officio* County Collector and *ex-officio* Town Collector of the Town of North Chicago, and the defendant, the City of Chicago, and each of them, and each and every of their respective agents, deputies, servants, attorneys and representatives be and are perpetually enjoined and restrained from in anywise levying or collecting or in any manner attempting, directly or indirectly, to levy or collect or to enforce against the complainant, or against any of its property, or against the aforesaid grantor and lessor corporations of the complainant, or against any of their property, or the property of either of them, said tax or taxes, or any or either of them or any part thereof.

BRIEF OF ARGUMENT.

I.

THE CIRCUIT COURT ERRED IN REFUSING TO DISMISS THIS CAUSE FOR WANT OF JURISDICTION.

(a) Equality and uniformity of taxation is not a right guaranteed by the Federal Constitution.

(b) Where the ministerial officers of a state, contrary to the constitution and laws of that state, deprive a person of his property, without due process of law, no federal question is presented, for their acts will not be imputed to the state, but in such a case it will be presumed that the courts of the state will give full relief.

(c) The session of the State Board was public, and appellee had an opportunity to be present and be heard. This constituted due process of law.

II.

THE CIRCUIT COURT ERRED IN ADMITTING INCOMPETENT EVIDENCE IN BEHALF OF APPELLEE AND IN REFUSING TO HOLD THAT THERE WAS NO COMPETENT EVIDENCE TENDING TO PROVE THE ALLEGATIONS OF APPELLEE'S BILL OF COMPLAINT.

(a) The testimony of the individual members of the State Board in reference to the operation of their minds at the time they made the assessment complained of was incompetent.

(b) The extracts from the report of the Railroad and Warehouse Commissioners and the Board of Agriculture were incompetent.

(c) The figures taken from the books of the

Union Stock Yards and Transit Company and Brown's Directory of American Gas Companies were incompetent.

(d) The alleged discrepancy between the Census Report and the Assessors' returns with reference to the amount of live stock within the State of Illinois, during the year 1900, did not prove any issue in this case.

(e) The records of the State Board did not sustain the allegations of appellee's bill.

(f) The testimony of the officers of appellee in reference to the value of its property on April 1, 1900, did not make out a case.

III.

THE CIRCUIT COURT ERRED IN REFUSING TO HOLD THAT APPELLEE HAD NOT MADE OUT A CASE ENTITLING IT TO RELIEF IN A COURT OF EQUITY.

(a) If the reassessment complained of was void and illegal because the Board had exhausted its power in making the first assessment, then appellee had an adequate remedy at law, for it could have paid the void assessment and then have recovered the money back.

(b) Overvaluation of property by an assessing body, unaccompanied with fraud or bad faith, furnishes no ground for equitable intervention.

(c) Appellee was guilty of *laches* and iniquity, and has not offered to do equity.

IV.

THE CIRCUIT COURT ERRED IN ENJOINING THE COLLECTION OF THE TAX IN QUESTION WITHOUT REQUIRING APPELLEE TO PAY $274,937.98, BEING THE AMOUNT NOW DUE IN ADDITION TO THE TAX ALREADY PAID.

(a) The Circuit Court erred in assessing appellee upon its alleged net income instead of upon the fair market value of its capital stock.

(b) There was no competent evidence tending to show the net income of appellee.

ARGUMENT.

I.

THE CIRCUIT COURT SHOULD HAVE DISMISSED THIS CAUSE FOR WANT OF JURISDICTION.

The Constitution of the State of Illinois (Sec. 1, Art. 9) guarantees to persons and corporations within the states equality and uniformity of taxation. The statutes of the State of Illinois enacted pursuant thereto provide (Sec. 108, Hurd's Revised Statutes, 1899, p. 1412) that the State Board of Equalization shall assess the capital stock and franchises of corporations at its fair cash value.

It will be observed that the foregoing statutory and constitutional provisions imposed upon the State Board of Equalization the duty of assessing the capital stock and franchises of corporations at its fair cash value in precisely the same way that all other property throughout the state is assessed.

The Supreme Court of Illinois has repeatedly held that it is the duty of the assessing officers of the State of Illinois, to carry out the constitutional and statutory provisions, in reference to uniformity and equality of taxation.

The Circuit Judge in his opinion (Trans., C. U. T. Co., 1297) held that the failure of the State Board of Equalization to carry out the constitutional and statutory provision above quoted, guaranteeing equality and uniformity of taxation, constituted a violation of the 14th Amendment, and gave a Circuit Court of the United States jurisdiction of this cause regardless of the citizenship of the parties.

An examination of the decisions of this court will plainly demonstrate that the Circuit Judge was in error in his fundamental assertion in this case, that any substantial departure from the laws of the State of Illinois, on the part of the officers of the State of Illinois, in levying and collecting taxes, constituted the taking of property, without due process of law, in violation of the Federal Constitution.

A.

The law is well settled by the decisions of this court that equality and uniformity of taxation is not a right guaranteed by the Federal Constitution.

The following are a few of many decisions of this court laying down the above rule:

State Railway Tax Cases, 92 U. S., 575, 618.

Davidson v. *Board of Admrs. of New Orleans*, 96 U. S., 97.

Kelly v. *City of Pittsburgh*, 104 U. S., 78.

Merchants & Manufacturers Nat. Bank v. *Pennsylvania*, 167 U. S., 461-4.

Henderson Bridge Co. v. *City of Henderson*, 173 U. S., 592.

Magoun v. *Ill. Trust & Sav. Bank*, 170 U. S., 283, 293, 295.

Connolly v. *Union Sewer Pipe Co.*, 184 U. S., 540, 562.

State of Missouri ex rel. Hill v. *Dockery*, 191 U. S., 165, 170.

Travelers Ins. Co. v. *Connecticut*, 185 U. S., 364, 371.

See also Brief in *C. U. T. Co.* case, p. 39.

Should we, however, concede that equality and uniformity of taxation is guaranteed under the 14th Amendment, appellee's bill of complaint does not make out a case giving the Circuit Court jurisdiction, for the alleged wrongful acts of the State Board of Equalization were not the acts of the state within the meaning of the 14th Amendment.

B.

Where the constitution and the laws of a state are just and fair and the sole grievance of which a party complains is that the officers of the state, charged with executing those laws, have deprived that party of his property, contrary to the constitution and the laws of the state, and in violation of the terms thereof, no federal question is presented, for, under the above circumstances, it will be presumed that the state courts will give full relief against the illegal and unauthorized acts of the officers of the state.

The above proposition is sustained by the following authorities:

Strauder v. *West Virginia*, 100 U. S., 303.

Virginia v. *Rives*, 100 U. S., 313.

Civil Rights Cases, 109 U. S., 3.

Kentucky v. *Powers*, 201 U. S., 1.

Barney v. *City of New York*, 193 U. S., 430.

Manhattan Railway Company v. *City of New York*, 18 Fed., 195.

Coulter v. *Louisville & N. R. Co.*, 196 U. S., 599.

See also Brief in *C. U. T. Co.* case, p. 46.

C.

Equally untenable is the claim in appellee's bill of complaint that under the circumstances there described the appellee was deprived of its property without due process of law, because it had no opportunity to be heard at the time the assessment complained of was levied against it.

The time and place of the sessions of the State Board of Equalization were fixed by law, those sessions were public, and the appellee had an opportunity to be present and be heard. Such a proceeding constitutes due process of law.

Michigan S. R. R. Co. v. *Powers*, 201 U. S., 245, 301.

Public Clearing House Co. v. *Coyne*, 194 U. S., 497.

II.

THERE IS NO COMPETENT EVIDENCE IN THIS RECORD TENDING TO SUSTAIN THE MATERIAL ALLEGATIONS OF APPELLEE'S BILL OF COMPLAINT WITH REFERENCE TO THE ASSESSMENT COMPLAINED OF.

We will take up each of the items of evidence offered by appellee before the Master and show that

that evidence was incompetent and should be disregarded by this court.

A.

The testimony of the individual members of the State Board of Equalization in reference to the operation of their minds at the time they made the assessment complained of was incompetent and should have been excluded by the Circuit Court.

Four out of the twenty members of the State Board of Equalization, that made the assessment complained of, were called to the witness stand before the Master by the appellee and they testified in substance that they did not equalize the assessment of appellee's property with the assessments made upon other property throughout the state for the same year, and that they put down what they believed the State Circuit Court wanted them to put down.

By this means they were permitted to contradict their official acts, as evidenced by the record of the State Board. This evidence was incompetent and should have been excluded.

Wright v. *City of Chicago*, 48 Ill., 285.

Quick v. *Village of River Forest*, 130 Ill., 323.

Ryder Estate v. *City of Alton*, 175 Ill., 94.

Republic Life Ins. Co. v. *Pollak*, 75 Ill., 292.

Fayerweather v. *Ritch*, 195 U. S., 276.

Coulter v. *Louisville & N. R. Co.*, 196 U. S., 599.

Brief, *C. U. T. Co.*, p. 79.

B.

The extracts from the report of the Railroad and Warehouse Commissioners and the Board of Agriculture of the State of Illinois were incompetent.

In order to make a public record competent evidence of the facts therein recited, two things are necessary: First, that the fact therein recited is required by law to be reported by the official; second, that the person recording the fact must have had personal knowledge of the matters he was registering at the time.

The above reports do not conform to either of said requirements, and were therefore incompetent.

Hegler v. *Faulkner,* 153 U. S., 109.
Chaffee v. *U. S.,* 18 Wall., 516.
Swift v. *State of New York,* 89 N. Y., 52.
Brief, *C. U. T. Co.,* p. 92.

C.

The figures taken from the books of the Union Stock Yards and Transit Company and from Brown's Directory of American Gas Companies were not competent evidence and should have been excluded.

The above publications were private compilations, and the witness who produced said figures admitted that he had no knowledge as to whether the figures were correct. Under the above circumstances the publications should have been excluded.

State v. *Daniels,* 44 New Hampshire, 383.
Richardson Bros. & Co. v. *Stringfellow,* 100 Ala., 416.
Langley v. *Smith,* 3 New York St. Rep., 276.

See also authorities cited in *C. U. T. Co.* Brief, p. 102.

D.

The alleged discrepancy between the United States Census Report and the Assessors' return with reference to the amount of live stock within the State of Illinois during the year 1900 does not tend to prove any fact in this case.

Live stock could be assessed at a different rate and in a different manner than the property of street railroads, gas, telephone and electric light companies, without infringing on the right guaranteed by the Federal Constitution.

E.

The records of the State Board of Equalization do not sustain any of the allegations of appellee's bill.

Appellee offered in evidence certain resolutions contained in the minutes of proceedings of the State Board of Equalization for certain years prior to 1893, to the effect that in the opinion of the board the real and personal property of the state during the years in question had been assessed at less than its full cash value.

Prior to 1898 assessors were required to value property at its fair cash value. By the terms of the Act of July 1st, 1898, assessors were required to set down in one column the full value of real and personal property and in another column one-fifth of said full value, which latter sum should be the assessed value. This statute was enacted for the very purpose of doing away with the practice of under-

valuing property which it is claimed had existed prior thereto. Evidence of undervaluations prior to the Act of 1898 does not tend to prove the existence of undervaluations thereafter.

Coulter v. *Louisville & N. R. Co.*, 196 U. S., 599.

III.

APPELLEE HAS NOT MADE OUT A CASE ENTITLING IT TO RELIEF IN A COURT OF EQUITY.

A.

If the contention of appellee be well taken, namely, that the reassessment of 1900 was void and illegal because the Board had exhausted its powers in making the first assessment, then appellee had an adequate remedy at law, for it could have paid the void assessment and then have recovered the money back.

Shelton v. *Platt*, 139 U. S., 591.

Allen v. *Pullman Pal. Car Co.*, 139 U. S., 658.

Pacific Express Co. v. *Seibert*, 142 U. S., 339.

B.

Overvaluation of property by an assessing body unaccompanied with fraud or bad faith furnishes no ground for equitable intervention.

There are many general allegations in appellee's bill, but when those allegations are reduced to their lowest terms, the whole bill (aside from the claim that the second assessment was void) is that the property of the appellee was assessed at a higher proportionate amount than was the property of

other persons and corporations throughout the State of Illinois for the same year. The above allegations are insufficient to justify relief in a court of equity.

Pittsburgh C. C. & St. L. R. Co. v. *Backus*, 154 U. S., 421, 434.

Maish v. *Territory of Arizona*, 164 U S., 599, 611.

C.

Before a court of equity will grant an injunction to restrain the collection of a tax on the ground of excessive valuation and unfair discriminations on the part of the assessors, complainant must distinguish by his bill the legal from the illegal part of the tax, and must actually pay the tax which is due; otherwise he is not entitled to relief.

Albuquerque Nat. Bk. v. *Perea*, 147 U. S., 87.

State Railway Tax Cases, 92 U. S., 575, 616.

National Bank v. *Kimball*, 103 U. S., 733.

IV.

THE UNDISPUTED EVIDENCE SHOWS APPELLEE OUGHT TO PAY $274,937.98 MORE THAN IT WAS REQUIRED TO PAY BY THE ORDER OF THE CIRCUIT COURT.

Even if we assume that the Circuit Court had jurisdiction of this cause, that the appellee has established the allegations of its bill by competent evidence, that the reassessment for the year 1900 was illegal and void, and that the Circuit Court had the power to make a reassessment, then appellee was only entitled to the following relief:

First, to receive credit for the $8,817.00 paid on the original assessment; second, to have its capi-

tal stock and franchises assessed at 70 per cent of its actual cash value instead of at 100 per cent, which latter sum it is claimed the State Board of Equalization used as the basis for its assessment.

The rules of the State Board of Equalization under which all other corporations were assessed for the year 1900, required that the market value or fair cash value of the corporation's shares of stock should be added to its debt (excluding indebtedness for current expenses) and that the aggregate should be the fair cash value of the capital stock and franchises of such corporation.

The above method of assessment was the one directed to be made by the writ of mandamus of the Circuit Court, and has been held to be the proper method of assessing capital stock and franchises of Illinois corporations under the very statute now in question.

State Board of Equalization v. *People,* 191 Ill., 528.

State Railroad Tax Cases, 92 U. S., 575.

The Circuit Court ignored the fair cash value of the stock of appellee, and capitalized the alleged net income at six per cent (taking such net income from certain lump sums shown by the company's books) and by these means placed so insignificant a valuation upon the capital stock and franchises of appellee that it was permitted to escape the payment of the greater share of its tax for the year 1900.

The Circuit Court, in arriving at the amount of the additional tax to be paid by appellee for the year 1900, followed the computation made by the Master; the Master in turn adopted the figures and method

of computation furnished to him by the company's experts.

We have presented three tables below marked respectively (1), (2) and (3). Table (1) showing the computation made by the Master, which was approved by the Circuit Court; Table (2) showing the amount of taxes due under the rules of the State Board of Equalization, which were approved by this court in the *State Railroad Tax Cases, supra,* and Table (3) showing the tax still remaining due and unpaid on appellee's own theory that 1/5 of 70 per cent of the full value of the capital stock and franchises of the appellee and its lessor corporations should be used instead of the full value, which it is claimed the State Board took.

(1)

Net earnings after deducting taxes...$	169,528.54
Full tax	26,765.66
Net income .....$	142,762.88
Capitalized at 6%	2,379,381.33
Equalized at 70%	1,665,566.93
1/5 for assessed value	333,113.39
Extending tax at 8.035.....$	26,765.66
Deducting tax already paid	33,663.76
Making an overpayment by appellee, according to computation of the Master, and leaving no additional amount to be paid.....$	6,898.10

Making an assessment of the capital stock of said corporations in accordance with the rules approved by this court in the *State Railroad Tax Cases, supra,* we would get the following result:

(2)

Capital stock value as required by law	$17,657,435.00
1/5 valuation upon which taxes are to be extended	3,531,487.00
Extending tax at 8.035	283,754.98
Deduct tax paid on original assessment	8,817.00
Tax yet due	$ 274,937.98

The above assessment is made by taking one-fifth of the full value of the capital stock and franchises of the above corporations.

Should we assume that appellee's contention be sound, that one-fifth of 70 per cent of the full value of the capital stock and franchises of the appellee and its lessor corporations should be taken, then we get the following results:

(3)

Full value of capital stock, including franchise (C. U. T. Trans., 242)	$19,046,500.00
70% of that amount	13,332,550.00
1/5 of that amount, to make assessed value	2,666,510.00
Deduct equalized assessed value of tangible property (C. U. T. Co., Trans., 242)	277,813.00
Leaves net assessed value of capital stock	$ 23,886.97
Extend tax at 8.035	191,931.80
Deduct tax paid on original assessment	8,817.00
Leaves	$ 183,114.80

tax remaining unpaid on complainant's own theory of equalizing the full value of the capital stock by taking one-fifth of 70 per cent of the same.

It appears from the foregoing figures that if the Circuit Court had followed the method of assessment approved by this court in the *Railroad Tax Cases, supra,* then even after equalizing the value by taking one-fifth of 70 per cent, the appellee would have been required to pay $183,114.80 more than it was ordered to pay by the Circuit Court.

There are many other inaccuracies in the method of computation which have been fully pointed out in the brief filed in the *Chicago Union Traction Company* case, to which reference is here made for a full discussion of the question. (Brief, *Chicago Union Traction Company,* p. 127.)

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GEORGE B. GILLESPIE,
Special Assistant Attorney General of said State;
Solicitors for Appellants.

IN THE

Supreme Court of the United States.

OCTOBER TERM, A. D. 1906.

No. 430

SAMUEL B. RAYMOND, County Treasurer of Cook County, Illinois, and Ex-officio County Collector of Cook County, Illinois; JOHN J. HANBERG, his Successor in office, as such County Treasurer and County Collector, et al., *Appellants,* *vs.* **CHICAGO CONSOLIDATED TRACTION COMPANY,** *Appellee.*	Appeal from the Circuit Court of the United States, for Northern District of Illinois.

BRIEF FOR APPELLEE.

This cause comes into this court on appeal from the Circuit Court of the United States for the Northern District of Illinois.

The original action was brought by the appellee, the Chicago Consolidated Traction Company, an Illinois corporation, formed for the purpose of, and operating a street railroad in the City of Chicago and other towns in Cook County, Illinois, against the appellants, the County Treasurer, who is *ex-officio* County Collector of Cook County; the collector of the Town of North Chicago, and the City of Chicago, to restrain

the collection of a tax on the capital stock of the appellee, based upon a valuation of its capital stock, including its franchise, made by the Illinois State Board of Equalization for the year 1900.

All references to the record in this brief are to the record in The Union Traction Company case unless otherwise specified.

STATEMENT OF THE CASE.

In Illinois the tangible property of corporations is assessed by the local Board of Assessors and Board of Review, and the valuation and assessment of the capital stock of Illinois corporations is confided to the State Board of Equalization.

The Board of Equalization having determined the fair cash value of the capital stock, including the franchise, deducts therefrom the value of the tangible property as fixed by the local board and divides the remainder by five, equalizes the result with the assessments of other property in the state; and the amount thus determined is the basis upon which the "capital stock tax" is computed.

At the annual session of the said board for the year 1900 the capital stock of appellee was assessed at $100,000 and taxes thereon having been certified, etc., were duly paid by appellee in the sum of $8,817.

On November 10, 1900, a petition for mandamus was filed in the Circuit Court of Sangamon County, Illinois, by the State of Illinois on the relation of Catherine Goggin and Robert C. Steele against the Illinois State Board of Equalization, and the individual members thereof, and proceedings were had therein whereby, the decision of the Circuit Court having in the meantime been affirmed by the Supreme Court, on November 6, 1901, a writ of mandamus was issued to the said board directing it to convene and reassess the capital stock, including the franchise of appellee, and nineteen other public service corporations of Chicago, the valu-

ation of whose property was also objected to by the said Goggin and Steele, on the ground that the assessments for that year were so much less than the real value of the properties as to amount to no assessment at all. Neither this corporation or any of those proceeded against were parties to the mandamus proceedings.

The writ of mandamus was returnable November 22, 1901, and on November 12th the said board, through its attorney, applied to the said Circuit Court for an extension of ten days' time in which to make the reassessments.

This application was refused by the court, and this refusal was couched in such language, and the manner and bearing of the judge was such that the board members understood him to order them to re-assess these properties without any delay; to satisfy the attorneys for the relators and they would satisfy the court (Rec., 108, 109, 113, 114, 132, 133, 143, 144, 147, 153, 157, 158); and to make no deduction for purposes of equalization (Rec., 121); and that if they did not get through this work in time that they might be in contempt of court and liable to imprisonment. (Rec. 145, 156.)

On the 20th of November, 1901, before said State Board had made the reassessment, an order was issued by the Circuit Court of the United States for the Southern District of Illinois in an action brought against said board by this appellee, temporarily restraining said board and the members thereof from making a reassessment. (Rec., 1068.)

This injunction was dissolved by the court on November 22nd at about 12:15 P. M. on the ground that

the action was premature, in that the court could not presume that the State Board would not do its full duty in the premises.

In the mandamus proceedings in the state court a copy of the Economist, a financial publication, was offered in evidence, which contained a list of stocks, and their alleged market value on March 31, 1900, April 1st of that year falling on Sunday, and no copy of said paper being printed on that day, and the members of the board, trying to satisfy the court in obeying its mandate, took the values stated in said publication as the values at which the reassessments should be made (Rec., 109, 110, 132, 134, 157) without bringing to bear on the matter any individual judgment (Rec., 158), and adopting the idea of value of the relators as the value of the board, under the belief that they were so ordered by the court, assessed the capital stock including the franchise of the appellee at $3,531,487, this being the total net assessment against the Chicago Consolidated Traction Company and the following companies: Chicago Electric Transit Company; North Chicago Electric Railway Company; Chicago and Jefferson Urban Transit Company, Cicero and Proviso Street Railway Company, Evanston Electric Railway Company; North Side Electric Street Railway Company, and the Ogden Street Railway Company, all of which had theretofore sold all their property of every kind to this appellee; and the Chicago North Shore Street Railway Company, lessor of this appellee, all of whose taxes the appellee is obligated to pay by the terms of the agreement under which the Chicago Consolidated Traction Company operates said companies.

For the purposes of this case, however, we can treat the sum of all these assessments as one assessment against this appellee.

The board in making this reassessment did not equalize it with the assessment of other property throughout the state (Rec., 109, 121, 133, 145, 147, 158), but assessed the property of appellee at its alleged full fair cash value, whereas all other property in the state was assessed at from sixty to seventy-five per cent. of its fair cash value (Rec., 116, 117).

This reassessment was thereupon certified by the board to the Auditor of Public Accounts and was certified by said Auditor to the County Clerk of Cook County, and said clerk, in connection with his extension of taxes generally for the year 1901, made an extension of taxes against such capital stock based on said reassessment, and delivered to the town collector of the Town of North Chicago, where any tax on the capital stock of this appellee is payable, the tax books and tax warrants, authorizing said town collector to collect the taxes based on said reassessment.

Thereupon this appellee brought this action in the Circuit Court of the United States for the Northern District of Illinois praying for an injunction against the collection of said tax by said officers.

The appellees claimed, for the purposes of federal jurisdiction:

1. That this reassessment was based on a gross over-valuation of its property, which was the result of a "judgment" other than that of the Board of Equalization; which was not equalized with the assessments against other property throughout the state;

and that the collection of a tax based thereon would amount to a taking of property by the state without due process of law, contrary to the Fourteenth Amendment to the Constitution of the United States.

2. That the board assessed appellee's property at its full alleged fair cash value while all other personal property in the state was assessed at an equalized rate of sixty to seventy-five per cent. of its fair cash value; and the the board having failed to equalize this assessment with the assessment of other property the state denied to appellee the equal protection of the laws contrary to the Fourteenth Amendment to the Constitution of the United States.

A temporary restraining order was issued as prayed for (112 Fed., 607) and the injunction was subsequently made permanent, upon the condition that the appellee pay the amount of taxes which was there found to be rightfully charged against it. This amount has been duly paid.

Just one month after this assessment was made, viz., December 23, 1901, the board made its assessment on the same property for the year 1901, and the assessed valuation placed on the property at that time was $1,732,503 (Rec., 1124), being less than half of the assessment made the month before (Rec., 1065 and 1069), and the testimony of the members of the board shows that this latter assessment represented their own judgment as to the value of the capital stock, etc., and not the judgment of the court. (Rec., 113, 114, 135, 137, 153, 154.)

This assessment for the year 1901 is not here complained of.

The appellants contend that the Circuit Court of the United States had no jurisdiction for the following reasons:

FIRST. THAT THIS ACTION IS NOT WITHIN ITS GENERAL EQUITY JURISDICTION.

SECOND. THAT THE PARTIES TO THIS ACTION, ALL BEING CITIZENS OF THE SAME STATE, THE CIRCUIT COURT HAD NO JURISDICTION, AS THE CASE WAS NOT ONE ARISING UNDER THE CONSTITUTION OR LAWS OF THE UNITED STATES.

THIRD. THAT EVEN IF THE CASE WAS ONE WITHIN THE COURT'S GENERAL EQUITY JURISDICTION AND ONE ARISING UNDER THE CONSTITUTION AND LAWS OF THE UNITED STATES, STILL THERE WAS NO EVIDENCE ON WHICH TO BASE THE COURT'S DECREE, AS ALL THE EVIDENCE WHICH BEARS ON THE QUESTIONS OF MOTIVE AND VALUATION WAS THE TESTIMONY OF THE MEMBERS OF THE STATE BOARD OF EQUALIZATION, IT BEING CLAIMED THAT THEY ARE INCOMPETENT WITNESSES IN THAT CONNECTION.

BRIEF OF ARGUMENT.

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ARGUMENT.

We will discuss these three propositions in their order.

I.

THE ACTION IS WITHIN THE GENERAL EQUITY JURISDICTION OF THE FEDERAL COURTS.

The bill alleged that if your orator should pay this tax to the town or county collector, in order to recover back the same, it would be necessary to bring a separate suit against each one of the several taxing bodies receiving its proportionate share of said taxes, thereby necessitating a multiplicity of suits, and that the portion of the taxes which would go to the State of Illinois could not be collected back by any legal proceedings whatever, and that if the repayment could be compelled from said City of Chicago and other taxing bodies, it would not cover costs or commissions. (Consolidated case Rec., 14.)

It is also alleged:

> "That your orator's personal property consists chiefly of its cars and other personal property actually used in its business of transporting passengers upon the streets of the City of Chicago, and that levy of said tax by distress upon any part of your orator's personal property would interfere with and interrupt the operation of your orator's street car system in the City of Chicago, and would greatly embarrass not only your orator in the carrying on its said business in operating its street cars in the City of Chicago,

but would embarrass and injure the public who use your orator's cars in going to and from their business in the said City of Chicago, and that the property so levied upon and sold could not be recovered by your orator in an action of replevin or by any other legal proceeding." (Consolidated case Rec., 13, 14.)

These allegations are plain and unambiguous and are plainly to the effect that if the injunction prayed for were not granted, a "multiplicity of suits" and "irreparable injury" would result.

That these allegations clearly bring the case within the general equity jurisdiction of the court we think is settled by the following cases from which we quote:

Cummings v. *National Bank*, 101 U. S., 153.

This was a case where it was sought by the county assessors, etc., of Lucas County, Ohio, to assess National Bank stock for purposes of taxation at a higher rate than other personal property including the stock of state banks. A national bank brought suit in the Circuit Court for the Northern District of Ohio, seeking to enjoin the collection of the taxes so levied. The injunction was allowed, and on pages 156 and 157 the court said:

"It is next suggested that since there is a plain adequate and complete remedy by paying the money under protest and suing at law to recover it back, there can be no equitable jurisdiction of the case. The reply to that, is that the bank is not in a condition where the remedy is adequate. In paying the money it is acting in a fiduciary capacity as the agent of its stockholders, an agency created by the statutes of the state. If it pays an unlawful tax assessed against its stockholders they

may resist the right of the bank to recover it back from them. * * * To prevent a multiplicity of suits equity may interfere."

Union Pacific Railway Company v. *Cheyenne*, 113 U. S., 516.

This was a case brought to enjoin the collection of certain city taxes, which the railway company alleged had been unlawfully assessed against it.

On page 525, the court, Mr. Justice Bradley, said:

"But it is contended that the complainant should have sought a remedy at law and not in equity. It cannot be denied that bills in equity to restrain the collection of taxes illegally imposed have frequently been sustained. But it is well settled that there must be some equitable ground for relief, besides the mere illegality of the tax. * * * It often happens, however, that the case is such that the person illegally taxed would suffer irremediable damage or be subject to vexatious litigation if he were compelled to resort to his legal remedy alone. For example, if the legal remedy consisted only of an action to recover back the money after it had been collected, by distress and sale of the taxpayers land, the loss of his freehold would be mischief hard to be remedied. Even the cloud cast upon his title by a tax under which such a sale could be made would be a grievance which would entitle him to go into a court of equity for relief."

Allen v. *Baltimore & Ohio Railway Co.*, 114 U. S., 311.

This is one of the so-called Virginia coupons cases, and arose out of the refusal of the state collector of taxes to accept certain warrants which were by law receivable for taxes.

The treasurer of Augusta County having levied upon certain rolling stock and threatening to levy upon some

more of it and to sell it for payment of the taxes, this suit was brought to enjoin his so doing. The railroad alleged that the acts of the officers interfered with the proper exercise of its franchise, as it would take a long time to replace the cars so sold.

The court held that this made a case where a court of equity would intervene to prevent irreparable injury. The facts in the case at bar are similar and the allegation in the bill which we have quoted above bring it quite within the meaning of the above case.

Pacific Express Co. v. *Siebert,* 142 U. S., 339, was a case arising out of an attempt on the part of the State of Missouri to tax express companies under the act of May 16, 1889.

On page 348 the court, Mr. Justice Lamar, said:

> "But when the illegality of a tax or the invalidity or unconstitutionality of the legislative act under which it is imposed is established, it becomes necessary to go further and make out a case that can be brought under some recognized head of equity jurisdiction, such as that the collection of the tax sought to be restrained may entail a multiciplicity of suits or cause some other irreparable injury as for instance the ruin of the complainant's business, or where the property is real estate, throw a cloud upon the title of complainant."

Ogden City v. *Armstrong,* 168 U. S., 224.

This was an appeal from the Territory of Utah and was brought to restrain Ogden City, its mayor and city council from levying assessments on the plaintiff's real estate for the purpose of paving a portion of one of the streets of Ogden City.

On page 237 Mr. Justice Shiras said:

> "A suit in equity will not lie to restrain the collection of a tax on the sole ground that it is illegal. There must exist in addition special circumstances bringing the case under some recognized head of general jurisdiction such as that the enforcement of the tax would lead to a multiplicity of suits or produce, irreparable injury or, where the property is real estate, throw a cloud on the title of complainant."

These cases were all approved and followed by this court in *Bank* v. *Dodge,* 197 U. S., 70-75.

See also

Sandford v. *Poe,* 69 Fed., 546;
Western Union v. *Norman,* 77 Fed., 13;
Central Pacific Ry. Co. v. *Evans,* 111 Fed., 71.

It requires no argument to show the court how irreparable the injury would be if no injunction were granted. We would see the tax officers levying on the rolling stock, and it would take nearly all of it to satisfy this claim of about $345,000. The business of the company would be at a standstill, the public would be annoyed and inconvenienced, and the relations of the company with the city in regard to franchise rights, as this court will recall, already strained, would be at the breaking point, and the company's franchise perhaps rendered valueless on account of an enraged public.

The State of Illinois cannot be sued, and the appellees could never recover the amount of these taxes which were apportioned to it, and the charges for collecting the tax could never be recovered. Every subdivision of the state for whose benefit these taxes are

raised would have to be sued and besides the multiplicity of suits thus resulting, a great and unnecessary expense would be incurred.

It is further alleged in the bill that the Board of Equalization unmindful of its duty and under a mistaken idea of instructions issued to it by the Circuit Court of Sangamon County, Illinois, knowingly adopted a system of valuations as to a class of corporations which was intended to and did make these corporations bear more than their proportionate share of the burdens of taxation. (Consolidated case Rec., 14, 15.)

This is, in effect, an allegation of a fraudulent intent or purpose on the part of the members of the board in the carrying out of its duties.

In the following cases similar allegations were made and the courts took jurisdiction on the ground of fraud.

In *Dundee Mortgage & Investment Co.* v. *Parish,* 24 Fed., 197, the court says, on p. 202:

> "Whenever the assessor of a district of a county as large as one of these counties, uniformly estimates real property at only one-third of the value he placed on mortgages, it is impossible to attribute the result to the infirmity of human judgment, *and the only conclusion possible in the premises is that it was deliberately and willfully done in pursuance of a settled purpose or rule on his part.*" (Italics ours.)

In *Balfour* v. *Portland,* 28 Fed., 738, the defendant, through its officers, deliberately valued plaintiff's property at double the value it did all other lands, and levied a tax thereon accordingly. This was paid under

protest and suit was brought to recover the illegal part thereof. Judge Deady, in deciding that the action would not lie, said, on page 739:

> "The assessment and levy is a quasi judicial proceeding; and, the subject-matter being within the jurisdiction of the defendant, its action, so long as no rule or principle is violated, cannot be questioned collaterally. The remedy for any mere overvaluation of property incident to the infirmity of human judgment is an appeal to the council as provided by statute. * * * *But an overvaluation of property which is the result of improper motives on the part of those charged with the duty of making or revising the assessment, or the adoption of a rule of valuation designed to operate unequally on a class in violation of the constitutional requirements of uniformity, may* be corrected in equity by an injunction against the collection of the excess on the payment of what is justly due." (Italics ours.)

In *Railroad & Telephone Cos.* v. *Board of Equalization*, 85 Fed., 302, it was sought to enjoin the board of supervisors of Tennessee from certifying the assessed valuation of their property for taxation for the year 1897-8, alleging that the assessments were invalid, by reason of their being excessive and out of proportion to the taxable value at which other species of property were assessed.

On page 305, the court says:

> "Stated in another form, the contention for defendants is that the court cannot inquire into the facts in the absence of fraud or bad faith on the part of the board of equalization. It is said further, that, if errors of law occurred, these must be corrected by *certiorari* proceedings and the jurisdiction of this court to interfere by injunction is denied.
>
> "It is conceded and could not be controverted

that the bill contains no specific allegation of fraud on the part of the board of equalization. While I do not regard this as a controlling point at all in the case, it must be stated to avoid misapprehension that, *although acting with perfect honesty, if the assessors or board of equalizers pursued methods calculated to bring about a substantial inequality in the taxable value of the properties here in question as compared with other species of property in the state the innocent intent in such a procedure would be no justification whatever in law for a wrong result.*" (Italics ours.)

In *Taylor* v. *Louisville & Nashville R. R. Co.*, 88 Fed., 351:

This was a case decided by the Circuit Court of Appeals of the Sixth Circuit and was decided by Mr. Justice Taft and concurred in by Justices Lurton and Severens.

On page 374 the court said:

"If any board which is an essential part of the taxing system *intentionally and therefor fraudulently* violates the law by uniformly undervaluing certain classes of property, the assessment by other boards of other classes of property at the full value, though a literal compliance with the law makes the whole assessment, considered as one judgment, a fraud upon the fully assessed property. And this is true although the particular board assessing the complainant's property may have been wholly free from fault of fraud or intentional discrimination. * * * We reach the conclusion, therefore, that the Circuit Court was right in enjoining the unjust, unequal and (in the sense already explained) fraudulent assessment against the complainant." (Italics ours.)

In *Coulter* v. *Louisville & Nashville Ry.*, 196 U. S., 599, after considering the evidence of overvaluation, etc., Mr. Justice Holmes said, on page 607:

> "It might even require consideration, if necessary, whether it ought not to be shown further that the appellants, in valuing the franchise, consciously adopted a different standard from that which they understood to be adopted in other counties."

Thus the rule laid down in the previous cases have been indirectly applied very recently by this court.

In the case at bar the members of the state board knowingly and intentionally valued appellee's property at a higher rate than other property, and they did this by reason of the fact that they were coerced or thought they were coerced by the Circuit Court of Sangamon County. The board's intention may not have been fraudulent in fact as they were perhaps doing their supposed duty, but it is not their intention to which we must look, but to the result and effect of their actions, and no other conclusions can be drawn from the facts than that the discrimination was fraudulent in law.

The Federal Courts are not of course bound, in the exercise of their equity jurisdiction, by the practice of the state courts in that regard, but several times this court has laid stress on the fact that the state courts have followed the remedy sought to be invoked in the Federal Court.

In *Cummings* v. *Bank,* 101 U. S., 153, the court considered the fact that a statute of Ohio expressly authorized suits to be brought to enjoin the collection of taxes wrongfully assessed or levied as bearing upon its right to enjoin in a similar case.

In *Western Union Telegraph Company* v. *Norman*, 77 Fed., 13, the court said, page 21:

> "It is the uniform practice in this state to allow an injunction to sustain either the assessment or collection of illegal taxes, and the equity jurisdiction in such cases has been frequently sustained in the Court of Appeals. (Citing Kentucky cases.) But independently of this uniform practice in this state, which sustains the exercise of equitable jurisdiction of injunction in such cases, the allegations of this bill, as to the multiplicity of suits, and the irreparable injury which the assessment and collection of these taxes will cause the complainant, are, we think, sufficient to sustain the equitable jurisdiction upon general principles."

We wish, therefore, to call attention to the rule in Illinois in such a case.

Town of Lemont v. *Stone Co.*, 98 Ill., 94.

On page 102 of the above case, the court used the following language:

> "There is a class of cases of which a court of equity does take jurisdiction to afford relief against the collection of taxes. Those cases are where a tax has been levied on property exempt from taxation; * * * *where it is levied by persons empowered to levy it but they have exceeded the amount the law authorizes; and where a fraud is clearly shown in fixing the value of the property for taxation.*"

See, also,

School Directors v. *School Directors*, 135 Ill., 464.

Lawrence v. *Traner*, 136 Ill., 474.

Counsel for appellants contend, that before a court of equity will grant an injunction to restrain the col-

lection of taxes, on the ground of excessive valuation and unfair discrimination on the part of the assessors, complainant must distinguish, by his bill, the legal from the illegal part of the tax, and must actually pay the tax which is due and that a mere offer to do equity is not sufficient.

If we were arguing this case on a demurrer, this might be important, but in the case at bar no demurrer was filed and the case was based on its merits, and the Circuit Court caused the complainant to do equity by paying what, in its judgment, was a fair amount of taxes, as a condition precedent to the granting of the injunction.

The statement of counsel for appellants on page 6 of their brief, to the effect that a demurrer had been filed in the Consolidated Traction Company case, is not borne out by the record.

A point is made by counsel for appellants that if any injustice accrued in the re-assessment it was the fault of the appellee in not having filed a statement of its property, etc., as required by law.

The only evidence in the record to bear out this statement, is the statement that eighteen out of twenty-three companies had not done so, and that thirteen of these eighteen companies were the underlying companies whose taxes were, as we have shown, to be paid by this appellee and the Chicago Union Traction Company. There was no reason for those companies to file any statement as they were taxed as part of the Consolidated and Union Traction Companies.

However, if the statement is correct, and such statements were not filed, the law provides, in case no state-

ment is filed, that the board shall use the best information obtainable, and the law requires that the assessment, made under those circumstances, shall still be a fair assessment, not a punitive one.

Besides, this assessment was also attacked on the ground that the original assessment for the year 1900 had never been vacated or set aside (Rec. Consolidated case, 4), and was wholly void, and in such a case this court has held an offer to do equity was sufficient.

Fargo v. *Hart*, 193 U. S., 490.

We submit, therefore, that this case is clearly within the general equitable jurisdiction of this court, both on account of irreparable injury, multiplicity of suits, and fraud, three well established grounds for equitable interference.

SECOND.

Appellee claims that its constitutional rights have been infringed.

A. BY THE TAKING OF ITS PROPERTY BY THE STATE WITHOUT DUE PROCESS OF LAW.

B. BY THE STATE'S DENYING IT THE EQUAL PROTECTION OF THE LAWS.

Counsel for appellants argue that there has been no violation of these two rights by the state because the statute under which the tax was assessed was and is a valid law, and the wrongful administration of a valid law is not the act of the state, but is only the act of its officers as individuals.

This contention, if correct, goes to the jurisdiction

of the Circuit Court so we will discuss it before we take up the merits of the controversy.

The State Board of Equalization is a board to which the legislature of the state has delegated a part of the duty of taxation and has clothed it with certain quasi judicial functions.

In the levying of taxes on the kinds of property taxed in the case at bar, its jurisdiction is original, exclusive and supreme.

There can be no appeal from its decision, and no error can be prosecuted to its proceedings, as a part of the taxing process.

Its findings are the last findings of the state on the matters before it and its proceedings are the last taken by the state before the assessment is certified to the ministerial officers for collection by distress or otherwise. The taxes are collected for the state under a state law and the money collected goes to the state. Two of the counsel for appellants are state officers. The act complained of is therefore the act of the state.

THIS COURT HAS HELD THAT WHERE A STATE JUDGE EXCLUDED COLORED PERSONS FROM JURY DUTY SIMPLY BECAUSE THEY ARE COLORED IT IS THE ACT OF THE STATE.

Ex parte Virginia, 100 U. S., 339, was a habeas corpus proceeding in this court whereby it was sought to release one Coles from being imprisoned under an indictment found against him in the District Court of the United States, charging him, being a judge of the County Court of Virginia, with excluding colored persons from grand and petit juries contrary to the Four-

teenth Amendment and Section 4 of the Act of 1875. On pages 346-347 this court said:

> "They have reference to actions of the political body denominated a state, by whatever instruments or in whatever modes that action may be taken. A state acts by its legislative, its executive, or its judicial authorities. It can act in no other way. The constitutional provision, therefore, must mean that no agency of the state, or of the officers or agents by whom its powers are exerted, shall deny to any person within its jurisdiction the equal protection of the laws. Whoever, by virtue of public position under a state government, deprives another of property, life, or liberty, without due process of law, or denies or takes away the equal protection of the laws, violates the constitutional inhibition; and as he acts in the name and for the state, and is clothed with the state's power, his act is that of the state. This must be so, or the constitutional prohibition has no meaning. Then the state has clothed one of its agents with power to annul or to evade it."

It was objected in the above case that the act of the court was judicial in its character and that therefore Congress could not punish the judge. In disposing of that contention the court said, page 348:

> "But if the selection of jurors could be considered a judicial act, can the act charged against the petitioners be considered such when he acted outside his authority and in direct violation of the spirit of the state statute? That statute gave him no authority when selecting jurors, from whom a panel might be drawn for a circuit court, to exclude all colored men merely because they were colored. Such an exclusion was not left within the limits of his discretion."

In the case at bar, the Constitution of Illinois demands equality of taxation. The duty of the Board

of Equalization is to equalize and whether or not it shall exercise that duty is not left to its discretion, and the failure of the board to so equalize is a failure of the state under the reasoning of the above case.

THIS COURT HAS HELD THAT THE ADMINISTRATION OF A MUNICIPAL ORDINANCE BY CITY OFFICERS IN SUCH A WAY THAT IT DISCRIMINATED AGAINST A CERTAIN CLASS OF PERSONS, IS THE ACT OF THE STATE.

Yick Wo v. *Hopkins, Sheriff*, 118 U. S., 356, was a case arising out of the violation of an ordinance of San Francisco, providing that no one should operate a laundry, without the consent of the Board of Supervisors unless the laundry be located in a brick or stone building.

The effect of these ordinances in operation was to put all the Chinese laundries out of business.

On page 373 the court said:

> "In the present case we are not obliged to reason from the probable to the actual, and pass upon the validity of the ordinances complained of, as tried merely by the opportunities which their terms afford, of unequal and unjust discrimination in their administration. For the cases present the ordinances in actual operation and the facts shown establish an administration directed so exclusively against a particular class of persons as to warrant and require the conclusions that whatever may have been the intent of the ordinances as adopted, they are applied by the public authorities charged with their administration and thus representing the state itself, with a mind so unequal and oppressive as to amount to a practical denial by the state of that equal protection of the laws which is secured to the petitioners, at

to all other persons, by the broad and benign provisions of the Fourteenth Amendment to the Constitution of the United States. Though the law itself be fair on its face and impartial in appearance, yet if it is applied and administered by public authority with an evil eye and an unequal hand, so as practically to make unjust and illegal discrimination between persons in similar circumstances, material to their rights, the denial of equal justice is still within the prohibition of the Constitution."

THIS COURT HAS HELD THAT WHEN A STATE RAILROAD COMMISSION, ACTING UNDER A STATE STATUTE GRANTING IT THE POWER TO FIX RATES, FIXES THE RATES SO AS TO DEPRIVE THE RAILROAD OF A FAIR RETURN ON ITS INVESTMENT, IT IS A TAKING OF PROPERTY WITHOUT DUE PROCESS OF LAW AND IS AN ACT OF THE STATE.

Regan v. *Trust Company*, 154 U. S., 362.

In the above case the court said, on page 390:

"A tax law, as it leaves the legislative hands may not be obnoxious to any challenge and yet the officers charged with the administration of that valid law may so act under it in the matter of assessment or collection as to work an illegal trespass on the rights of the individual."

See, also:

St. Louis & San Francisco R. R. v. *Gill*, 156 U. S., 649, 657.

Covington Turnpike Co. v. *Sandford*, 164 U. S., 578, 592.

Railroad Commission cases, 116 U. S., 307, 331.

Railroad Co. v. *Wellman*, 143 U. S., 339.

It seems to us that there can be no distinction drawn between the acts of the officers in the above cases and the acts of the officers in the case at bar, and if in one case they act for and in behalf of the state and are the state, it must be equally so in the other.

THIS COURT HAS HELD THAT THE FINAL JUDGMENT OF A STATE SUPREME COURT IS THE ACT OF THE STATE.

Chicago, Burlington & Quincy R. R. v. *Chicago,* 166 U .S., 226.

In the above case the court said, on pages 233-234:

> "But it must be observed that the prohibitions of the amendment refer to all the instrumentalities of the state, to its executive, legislative and judicial authorities, and, therefore, whoever by virtue of public position under a state government deprives another of any right, protected by that amendment against deprivation by the state, violates the constitutional inhibition; and as he acts in the name of the state and for the state, and is clothed with the state's powers, his act is that of the state. This must be so, or, as we have often said, the constitutional prohibition has no meaning and the state has clothed one of its agents with power to annul and evade it. * * * Its judicial authorities may keep within the letter of the statute prescribing forms of procedure in the courts, and give the parties interested the fullest opportunity to be heard, and yet it might be that its final action would be inconsistent with that amendment."

In *Williams* v. *Mississippi,* 170 U. S., 213, the court quotes the language of the Yick Wo case with approval.

See, also:

Henderson v. *Mayor of New York,* 92 U. S., 259.

Chy. Lung v. *Freeman*, 92 U. S., 275.
Soon Hing v. *Crowley*, 113 U .S., 703.
Scott v. *McNeal*, 154 U. S., 34-45.
Cummings v. *Bank*, 101 U. S., 153.
Neal v. *Delaware*, 103 U. S., 370.

The exact point raised has not been passed on by this court, but the Circuit Court and the Circuit Court of Appeals have decided the point according to appellee's contention, in cases where the questions involved were identical.

Railroad & Telephone Companies v. *Board of Equalizers*, 85 Fed., 302.
Louisville Trust Co. v. *Stone* (C. C. of A.), 107 Fed., 305.
Nashville R. R. Co. v. *Taylor*, 86 Fed., 168.

In *Raidroad & Telephone Companies* v. *Board of Equalizers, supra*, the court said, on page 303:

> "An assessment of property, which violates the provision of a state constitution requiring uniformity of taxation, and which is a class discrimination, also deprives the owner of the equal protection of the law guaranteed by the Fourteenth Amendment to the federal constitution although the statute may have been constitutional and the illegality is in its administration."

In *Nashville Ry. Co.* v. *Taylor, supra*, the court said, on pages 183-4:

> "It was said in the discussion at bar that the prohibitions of the fourteenth amendment are directed against state action only, and the correctness of this proposition is fully conceded, but a too limited definition and a too narrow view of what constitutes state action must not be entertained. State action, to which the prohibitions of

the fourteenth amendment extend, is not limited to a legislative enactment, as it comes from the hands of the legislature, but extends to all instrumentalities and agencies officially employed in the execution of the law down to the point where the personal and property rights of a citizen are touched. Under any other interpretation it would be practically possible to reduce the constitutional guaranty to a mere *brutum fulmen*. A statute might be framed entirely fair on its face, which, by the omission of necessary affirmative provisions, and a failure to contain needed directions, would furnish color of authority for practices thereunder which would be destructive of rights most carefully guarded by the Constitution."

In *Louisville Trust Co.* v. *Stone, supra,* the court (Lurton, Day and Severens, Circuit Judges) said, Mr. Justice Day delivering the opinion of the court:

"It may be conceded that, if the allegations of the bill are made out, there exists in respect to the property of complainant, and others similarly situated, a systematic, intentional, and illegal undervaluation of other property by taxing officers of the state, which necessarily effects an unjust discrimination against the property of which the complainant is the owner, and a bill in equity will lie to restrain such illegal discrimination, and that in such cases federal jurisdiction will arise because of the equal protection of the laws guaranteed by the fourteenth amendment. *Taylor* v. *Railroad Co.*, 31 C. C. A., 537, 88 Fed., 350; *Railway Co.* v. *Taylor* (C. C.), 86 Fed., 168, in which the grounds of federal jurisdiction are carefully examined by Judge Clark, who delivered the opinion."

The case of *Santa Clara County* v. *Southern Pacific Railroad Company*, 18 Fed., 385, a case very like the case at bar, came into this court and was affirmed

(116 U. S.), but the question was apparently not raised in this court. However, this court took jurisdiction, and it is a fair inference that had not this court been convinced that such an act, as the one here complained of, was the act of the state, the court itself would have called attention to the failure of jurisdiction.

A case embracing almost the same features as the case at bar came before this court in *Coulter* v. *Louisville & Nashville Railroad Company*, 196 U. S., 599, and there also this court by deciding the case assumed that the act complained of was the act of the state.

See, also,

Savannah, etc., Ry. Co. v. *Savannah*, 198 U. S., 392.

DISCUSSION OF AUTHORITIES CITED BY APPELLANTS TO THE EFFECT THAT THE ACTS HERE COMPLAINED OF ARE NOT ACTS OF THE STATE.

Virginia v. *Rives*, 100 U. S., 313, was a mandamus proceeding to compel the United States marshal and judge of the United States Court for the District of Virginia to return to the state court, two prisoners, colored men, who had been indicted for murder, and who had removed their cases to the federal court on the ground that while the laws of Virginia provided that all male persons should be eligible as jurors, the officers charged with the duty of selecting jurors had impaneled a jury composed exclusively of white persons.

On page 321 the court said:

"When a *subordinate* officer of the state, in

violation of state law, undertakes to deprive an accused party of a right which the statute law accords him, it can hardly be said that he is denied or cannot enforce in the judicial tribunals of the state, the rights which belong to him. In such case it ought to be presumed that the court will redress the wrong. If the accused is deprived of the right, the final and practical denial will be in the judicial tribunal which tries the case, after the trial has commenced. If the subordinate officer whose duty it is to select jurors fails to discharge that duty in the true spirit of the law, if he excludes all colored men solely because they are colored; or if the sheriff to whom a venire is given, composed of both white and colored citizens, neglects to summon the colored jurors solely because they are colored * * * it can with no propriety be said that the defendant's right is denied by the state and cannot be enforced in the judicial tribunals. The court will correct the wrongs, will quash the indictment, or the panel, or, if not, *the error will be corrected in a superior court.* We cannot think, such cases are within the provision of Sec. 641. Denials of equal rights in the action of the judicial tribunals of a state are left to the revisory powers of this court."

The last sentence we have quoted is, in effect, that one claiming to be deprived of the equal protection of the laws, must seek to have his rights protected by appeal or error proceedings, if there exists an appellate tribunal, and that, if that highest appellate court does not protect his constitutional rights then this court will revise the action of the state tribunal.

The laws of Illinois make the State Board of Equalization the highest state court on the subject of taxation and there can be no appeal or error proceedings *as a part of the taxing process.* The appellees' rights,

when not protected by this highest tribunal are therefore taken away by the state.

We think the above case is an authority directly against the contention of appellants.

The *Civil Rights Cases*, 109 U. S., 3, only decide that to make the Fourteenth Amendment applicable, the denial of rights should be the act of the state, and that congress has no power, under that amendment to prescribe rules for individuals preventing them from extending or not extending equal courtesies and privileges to those with whom they deal.

Missouri v. *Dockery*, 191 U. S., 165, was on error to the Supreme Court of Missouri upon a judgment quashing a writ of mandamus to the State Board of Equalization. The petition alleged that the board did not assess certain property as high as it should have done and had exempted other property altogether, and that in this way the petitioner was deprived of his property without due process of law.

The court there only decided that if these companies had been exempted from taxation altogether it would not be taking petitioner's property, for he admitted his tax was correct. The case has not the slightest bearing on the proposition it is alleged to support, for the question was not there discussed.

Barney v. *City of New York*, 193 U. S., 430, is the case chiefly relied on by counsel for appellants. That was a case where the City of New York and its Board of Rapid Transit Commissioners had contracted with certain contractors to build a subway, and the plans, etc., were all settled by the board and by the owners of the abutting property, when the board and its con-

tractors sought to change the plans by making the tunnel nearer the property line of appellant without compensating him therefor. He claimed that this change,—being made without provision for compensation, was a taking of property by the state without due process of law, and a denial of the equal protection of the laws. The allegations of the bill, however, showed that this change "was not only not authorized, but was forbidden by the legislation," and the court held that the bill on its face showed it was not an action by the state, and therefore not within the protection of the Fourteenth Amendment.

That this is all that was decided in the above case, see *Savannah, etc., Ry. Co.* v. *Savannah,* 198 U. S., 392.

This case is clearly not applicable to the case at bar.

The highest court in New York had decided that when the Board of Rapid Transit Commissioners had once fixed the location of the tunnel that its powers ceased.

The board having, therefore, no power to locate the tunnel in any other place than the original location, the case was the same as if the legislature had authorized the board to construct a tunnel in Park avenue and it had sought to locate it in Lexington avenue.

It was an act outside of its power and the board was without any jurisdiction in the premises.

The board there sought to do an act which it had no power to do, while in the case at bar the State Board had jurisdiction of the subject-matter and failed, as to the appellee, to execute a mandatory provision of the law, namely, to equalize.

If this case has the controlling importance claimed for it by counsel for appellants we are at a loss to understand why this court, familiar with its own decisions, did not consider it applicable to the case of *Coulter* v. *Railway Company*, 196 U. S., 599, a case nearly identical with the one at bar, and dismiss that case on its authority.

In re Storti, 109 Fed., 807, was affirmed in 183 U. S., 138, and the question whether the act complained of was an act of an officer or of the state was not even considered.

Manhattan Railway v. *City of New York*, 18 Fed., 195, was a case where it was sought to restrain the collection of taxes assessed against the property of complainant by the commissioners of taxes and assessments in the City of New York.

It does not appear in this case whether or not there was a board or court to which the complainant could have appealed as a part of the taxing process nor does it appear whether or not there was any state constitutional guaranty for equality of taxation as exists in Illinois.

The court, however, proceeded upon the assumption that as long as the State of New York maintained a judicial department to which appellant could resort to enforce its rights, that the act complained of was not the act of the state, until the state courts had acted on the matter. That this is an erroneous view of the law we will presently show, as it is the exact argument made by counsel for appellants in the case at bar.

Coulter v. *L. & N. R. R. Co.*, 196 U. S., 599, which

we will discuss later, has no bearing, however remote, on the question now under discussion. Whether the action there complained of was that of the state or merely of the officers, was not raised or discussed.

Kiernan v. *Multnomah County*, 95 Fed., 849, was a case brought by a citizen of Oregon against the sheriff of one of the counties of that state to restrain the collection of a tax on the ground that the "tax and proceedings are not authorized by the law of the state in pursuance of which the sheriff is acting," and that "there was a lack of due process and a denial of equal protection, under the constitution." The report of the case does not give "the facts" on which the opinion is based, so we cannot tell in what way there was a lack of due process, etc. The court there simply laid down the rule as established in *Virginia* v. *Rives* and the *Civil Rights Cases*.

Railway v. *Davis*, 132 Fed., 629, was a case similar to the one at bar, and the court there held that such a proceeding as in the case at bar was not a taking by the state of property without due process of law, and was not a denial by the state of the equal protection of the laws.

Arkansas, however, unlike Illinois, allows a direct appeal to the courts from the State Board, as a part of the taxing process (62 Ark., 461), and in this case the appeal appears not to have been taken, and of course there could not have been a lack of due process by the state until the state had denied that due process by its highest tribunal competent to pass on the question.

As in the case of *Manhattan Ry. Co.* v. *New York*,

supra, the court here proceeded on the theory that as the Supreme Court of Arkansas had held that to assess one class of property at full value, whereas other property was assessed at a lower valuation was a violation of the state constitution, it could not be said that the state had denied complainant the equal protection of the laws.

The *decision* of the court was right, because an appeal as part of the taxing process could be taken to the Supreme Court where the unfairness would be corrected and there could be no denial by the state of the equal protection of the laws until that appeal had been taken, but the *reason* given for the court's decision was clearly wrong, as we shall presently show.

In *Kentucky* v. *Powers*, 201 U. S., 1, the court held that the wrongs complained of must be sought to be redressed in the appellee tribunals of the state, and until that was done it could not be said that the state had denied any rights.

There, of course, the appeal was a part of the same proceedings.

All these cases are distinguished from the case at bar, in that the acts of the officers there complained of were forbidden by law and so could not be held to be the acts of the State, as will appear from the above statement in regard to each.

The rule to be drawn from the above cases is that if the state has provided a tribunal for correcting the errors complained of *as a part of the taxing process*, then no one can complain that he has suffered by the act of the state until he has exhausted those remedies. When, however, he has exhausted those remedies, or

there is no remedy provided, it becomes the act of the state.

It is urged by appellants, however, that the appellee could go into the state court and apply for an injunction as it did in this court, and that until the Supreme Court of Illinois had approved the act complained of, there could be no act of the state.

The answer to this is that the proceeding there contemplated *is not a part of the taxing process*, but is a separate and distinct appeal to the judicial department of the state to protect the person taxed from an executive wrong.

The basis of an appeal to the state courts in this case would have been that the State Board had denied, to appellee, due process of law, and the equal protection of the laws; and the ground of the complaint would have been that its constituional guaranty had been violated, which is the identical ground urged here.

The judiciary act makes the jurisdiction of the Circuit Courts of the United States concurrent with that of the state courts in such cases.

The construction claimed by appellants would deprive the federal courts of original jurisdiction in such cases unless there existed also jurisdiction based on diverse citizenship, etc., whereas the judiciary act gives a citizen whose constitutional rights are violated by the state the right to choose either the state or federal forum.

In this connection we quote from the opinion of the court below where this view is presented with singular clearness.

> "It will not do in this connection to say * * * that the state is not committed to the executive wrong complained of until its courts have spoken. Were there a right of appeal, *as part of the taxing* process, from the State Board of Equalization to the courts, that view might prevail. But no such appeal lies. The suit is not to review the assessment but to set it aside. * * * Let us see then how the sugestion, * * * logically works out. The State Board, for illustration, without exercising any independent honest judgment, assesses the capital stock of A, and also the capital stock of B, thus depriving them both, but for judicial restraint, of due process of law. A is a citizen of a state other than the one where the tax is laid; B is a citizen of the state where the tax is laid. A therefore may bring his action in the federal court; B must bring his action in the state court. But though the federal court is no part of the state the suits thus brought are identical in purpose. Can we say that so far as A is concerned the action of the board is the final act of the state, whereby the property would have been taken without due process of law, but for the injunction suit in the federal court, but that so far as B is concerned, though the injunction suit is precisely of the same character, the act of the board is not the final action of the state? Does the finality of the taxing act depend on the accident of citizenship?"

Another answer to this contention is that the original jurisdiction of the federal court is concurrent with the state courts in cases where a constitutional guaranty has been violated, and the contention of appellants would reduce the jurisdiction of the federal courts in such cases to an appellate jurisdiction only.

We therefore submit that the actions complained of are the acts of the state within the meaning of the Fourteenth Amendment.

A.

THE APPELLEE IS BEING DEPRIVED OF ITS PROPERTY WITHOUT DUE PROCESS OF LAW.

The term "due process of law" has never been defined by this court as it has not been deemed wise to limit its scope by so doing, but to leave it open so as to be able to extend its protection over any case that might arise in the future.

Davidson v. *New Orleans*, 96 U. S., 97, 101.

Judge Cooley in his edition of Storey on the Constitution says, Sec. 1956:

> "Due process of law requires first: the legislative act authorizing the appropriation, pointing out how it may be made and how the compensation may be assessed; and, second, that the parties or officers making the appropriation shall keep within the power conferred and *observe every regulation which the act makes for the protection of or in the interest of the property owner, except as he may see fit to waive them.*" (Italics ours.)

The language above quoted, was approved by this court in *Chicago, Burlington & Quincy R. R.* v. *Chicago*, 166 U. S., 226.

See, also,

Scott v. *McNeal*, 154 U. S., 34-36.
Pennoyer v. *Neff*, 95 U. S., 714-733.

If, therefore, the State Board of Equalization did not keep within the power conferred, and observe every regulation which the act (the Revenue Act of Illinois) provides for the protection of the property owner, the appellee has been deprived of its property without due process of law, and this is so whether the

"protection" is provided for in the act itself or in the Constitution of the State of Illinois, which is higher than the act.

The board in this case did not observe every regulation which is provided for the protection of the owner in the following particulars:

1. It did not give appellee the benefit of its independent judgment.

2. It did not give the appellee a hearing as to the value of its property.

3. It did not equalize the re-assessment with assessments against other property throughout the state.

1. THE BOARD DID NOT GIVE APPELLEE THE BENEFIT OF ITS INDEPENDENT JUDGMENT.

The statute contemplates that each person whose property is to be taxed shall have "his day in court." We do not use that expression in its literal sense, but to mean that he must have a tribunal pass on his rights in accordance with the law of the land.

The State Board of Equalization in its proceedings acts as a quasi judicial body.

> *Hagar* v. *Reclamation District*, 111 U. S., 701, 710.

It must determine the matters before it as a court. The finding of that court is its judgment. The very mention of a court presupposes that its acts are the result of its own independent judgment. The spirit of the law is not satisfied by the judgment of such a court as the Board of Equalization was when it made this assessment, under duress and fear of imprisonment.

A court does not mean a body whose acts, though its own on the surface, are in reality the acts of another who tells it, that if the matter in controversy is not decided in a certain way, it will go hard with it.

A judgment of such a court cannot be "due process of law," and any tax sought to be collected under an assessment so made is taking property without due process of law, for in reality there has been no assessment, as the board has not acted "judicially," but has acted mechanically only, and the assessment is that of the Circuit Court and not that of the board, and the court being without power to assess, the assessment is void. The statute contemplates that each person whose property is to be taxed shall have the advantage of the free, and untrammeled judgment of the members of the board on the value of his property, and if he does not receive that consideration to which he is entitled his property is taken from him without due process of law.

The Supreme Court of Illinois has said in *C., B. & Q. R. R.* v. *Cole*, 75 Ill., 591, 594, a case very similar to the one at bar that:

> "Whenever the board, undertakes * * * to fix values through prejudice or a reckless disregard of duty, in opposition to what must necessarily be the judgment of all persons of mature reflection, it is the duty of the court to interfere and protect taxpayers against the consequences of its acts. Where its jurisdiction is conceded, no mere difference of opinion as to the reasonableness of its valuations will justify equitable interference; *but its must be the result of honest judgment and not mere will.*" (Italics ours.)

The court might well have added "or fear."

In the last paragraph quoted the court recognizes the contention here made, that the judgment of the board must be in fact a "judgment."

As the Supreme Court of Illinois has thus said that the appellee is entitled to that "honest judgment" as a step in the taxing process, and as the State Board has not given that "judgment," due process of law has been denied.

Can it be said that the State Board acted "judicially" when every member of the board who testified in this case, and all the witnesses were members of the Capital Stock Committee of the board, said that their sole object was to satisfy the court and the lawyers for the relators in the mandamus proceedings?" (Rec., 108, 109, 113, 114, 132, 133, 143, 144, 147, 153, 157, 158.)

Can it be said to be the "judgment" of the board when one of these witnesses testified? (Rec., 158.)

> "Q. And that you could safely rely on these printed figures furnished you by and through the attorneys for the teachers?
>
> A. That was the information furnished us.
>
> Q. And you thought you could safely rely on that and not go any further?
>
> A. I assumed the court wanted that.
>
> Q. Did you believe that if you complied with that it would satisfy the court?
>
> A. Yes.
>
> Q. And that if you complied with anything else you would not satisfy the court?
>
> A. I did not think that anything that deviated from that decision would satisfy the court."

Can it be said to be the judgment of the board when a second witness said (Rec., 153):?

> "Oh, yes; 1901 assessment was all right, but the re-assessment on 1900 I think was wrong." (See, also, Rec., 113.)

Due process of law was defined by Mr. Webster in the Dartmouth College case as follows:

> "By the law of the land is most clearly intended the general law, a law which hears before it condemns, which proceeds upon inquiry, and renders judgment after trial."

In this case there was no such court as is embraced in that definition. The board did not proceed upon inquiry, and its judgment was rendered without a trial.

In this case there was no independent judgment of the board members either individually or collectively, but the judgment of a court was substituted for and instead of their judgment, and the effect on the rights of the appellee is the same, even though that judgment of the court was made the judgment of the board by virtue of a misconstruction put upon the court's words, and manner by the members of the board. It is enough that the appellees were deprived of the "judgment" of the board.

The opinion of the lower court in the case at bar is attached hereto (page 85) and we call particular attention to that court's careful consideration of this question.

However, stronger than any argument, are the facts in the case at bar.

The members of the board all testified that the re-assessment for 1900 was not the judgment of the board, and the assessment amounted to $3,531,487

The testimony shows that the assessment for 1901 made just one month later represented the real judgment of the board, and amounted to less than half of the former assessment, or.....$1,732,503

These widely different assessments of the same property were made on almost the same day, and it is impossible to conceive how both can be the result of a real "judgment."

The great discrepancy between those valuations cannot be reconciled by the fact that the board did not equalize the re-assessment on a 70 per cent. basis as hereinafter shown, was done in the case of the 1901 assessment, for the difference between the two assessments would still be nearly a million dollars.

The refusal of the court to grant the extension of time asked for was delivered in a most vituperative manner (Rec., 108), giving the members the impression that they had no discretion in the matter, but to get out their pencils and a candle and go to work and assess according to the decision (Rec., 108, 132, 156), or they would be in contempt of court (Rec., 156), and go to jail. (Rec., 145.)

It is plain from the fact that the board considered nothing but the evidence offered in the mandamus proceedings in valuing these properties that the board was panic stricken and blindly followed its idea of the meaning of the court's decision.

The injunction granted by the Circuit Court of the United States for the Southern District of Illinois, was dissolved on November 22nd, at about 12:15 P. M. and the writ of mandamus was returnable that same day.

The board re-assembled at once; the report of the Capital Stock Committee was adopted under a suspension of the rules; the assessment certified to the Auditor of Public Accounts and the writ of mandamus was returned to the court.

These re-assessments aggregated $32,000,000 and yet all was accomplished in an hour, being rushed through for fear of another injunction. (Rec., 115.)

The work of the board is done by committees and its report could not possibly have been examined into by the board, as a whole, in the time taken for all the steps in the assessment proceedings.

Can it be possible that a judgment of this kind is a "judgment" within the meaning of "due process of law" given in the Dartmouth College case?

Is it not clear that it was the result of fear of the Circuit Court? It matters not whether that feeling of fear was justified or not as long as it was honestly felt.

We submit, therefore, that inasmuch as the State Board of Equalization is a quasi judicial body to the benefit of whose "judgment" appellee was entitled, that not having received the benefit of that judgment on the valuation of its property, it is therefore being deprived of its property without due process of law.

2. THE STATE BOARD DID NOT GIVE THE APPELLEE A HEARING AS TO THE VALUE OF ITS PROPERTY.

Somewhere in the proceedings for levying a tax there must be an opportunity afforded for the person whose property is to be taxed to be heard.

If this is provided for, either by a hearing before the assessing officers when considering the assessment and before their action becomes final, or if the tax can only be collected by an action in the courts, there is no denial of due process of law.

Hogan v. *Reclamation Dist.*, 111 U. S., 701.
Kentucky R. R. Cases, 115 U. S., 321.
Davidson v. *New Orleans*, 96 U. S., 97.
Fallbrook Irrigation Co. v. *Bradley*, 164 U S., 157-8.
Kennard v. *Morgan*, 92 U. S., 480.
Wurtz v. *Hoagland*, 114 U. S., 606.
Lent v. *Tillson*, 140 U. S., 316.
Spencer v. *Merchant*, 125 U. S., 345.
Walston v. *Nevin*, 128 U. S., 578.
Stuart v. *Palmer*, 74 N. Y., 183.

In the case at bar it is true that the attorney for appellee went before the board so the mere form of hearing was bad.

We submit, however, that the constitutional guaranty means something more than a mere idle, empty form. It means and demands that one whose property is to be taken from him, through the taxing powers of the state, shall have a hearing that is in fact a hearing, such a hearing that is considered a hearing in a court of justice; an opportunity of showing to

the court the real value of their properties. In this case there was no real hearing, but an empty appearance before a board which considered itself bound to ignore all facts but the mandate of the Circuit Court. (Rec., 140, 141.)

The law regards the substance not the form of what is done.

Can such a mere form of hearing, utterly devoid of substance, conform to the standard laid down by Mr. Webster in the Dartmouth College case to the effect that due process of law is "a law which hears before it condemns, which proceeds upon inquiry and renders judgment after trial?"

Can it be said there was a hearing, in the real meaning of the term, when the sole object of the proceeding was to satisfy the supposed desires of the Circuit Court, when the witnesses all testified that they thought they had no discretion under the mandate? (Rec., pp. 129, 130, 133, 140, 141, 144, 158.)

That the board's consideration of the evidence offered in the mandamus proceeding, could not amount to a hearing being had by this appellee, is manifest by the fact that the appellee was not a party to this mandamus proceeding, and the only evidence offered there was by the relators.

In the language of Mr. Choate in his argument in *Fallbrook Irrigation Co.* v. *Bradley*, 164 U. S., 150:

> "The spirit of the constitutional rule is that they shall have real bread in the matter of a hearing, and this would put them off with nothing but a stone."

The Supreme Court of Illinois has decided that an

assessor, having accepted a list of taxable property from a taxpayer without objection, cannot arbitrarily increase it, without giving notice to the taxpayer, who must have an opportunity to explain and defend.

Cleghorn v. *Postlewait*, 43 Ill., 428.

This is true whether the increase be attempted by raising the valuation of the property already listed, or by adding other property to the list.

People v. *Ward*, 105 Ill., 620.

This being the law of Illinois, the appellee was entitled to be heard, and it makes no difference whether the statement required by law to be filed was filed or not; the assessment had been made and was sought to be increased.

If the board had sought to tax omitted property, perhaps a different rule would apply, but here the tax was against "the capital stock, including the franchise" of appellee and that is just what had been assessed originally, and there is no question of omitted property here. And it can make no difference whether the increase was made voluntarily or by the order of the court, for the object of the rule is to protect the property owner.

Counsel for appellants contend that as Mr. Miller, the attorney of the State Board of Equalization in the mandamus proceedings, received compensation from the corporations whose property was sought to be reassessed in that proceeding, these companies were really parties to that action. The rule is well settled, however, that one is not such a party to a proceeding, so as to be bound, unless he has a right to and is given

an opportunity to make a defense, control the proceedings, examine and cross-examine witnesses, and to appeal from the judgment or decree in case an appeal lies.

Lovejoy v. *Murray*, 3 Wall., 1.
Flanders v. *Seelye*, 105 U. S., 718.
Litchfield v. *Goodnow*, 123 U. S., 549.
Greene v. *Bogue*, 158 U. S., 478.

It will not be claimed that these corporations had any such rights as the above rule requires and Mr. Miller's testimony shows that they did not have such privileges. (Rec., 295, 296 *et seq.*)

We submit, therefore, that the mere formal hearing had before the board was not sufficient to comply with the requirements of "due process of law."

3. THE STATE BOARD DID NOT EQUALIZE THE RE-ASSESSMENT WITH OTHER PROPERTY.

That it was the duty of the board to equalize this assessment both with other property assessed by it, and with the assessments made by local officers is clear, and is admitted to be so in appellant's brief.

Law v. *People*, 87 Ill., 385, 406.
State Railroad Tax Cases, 92 U. S., 575.

THAT THE BOARD DID NOT EQUALIZE IS ALSO CLEAR.

Mr. Cruttenden, a member of the State Board of Equalization and Secretary of the Capital Stock Committee, testified (Rec., p. 145):

"Q. Did you make any deduction because of the fact that other property had not been assessed to its full value?
A. No, sir."

Mr. Hirsheimer, also a member of the Capital Stock Committee of the Board, testified (Rec., p. 158):

> "Q. In making up your report as to the values of these properties did you make any deduction whatever in order to equalize the value of these properties with the values of other property in the state?
>
> A. No, sir."

Mr. Martin, also a member of the Capital Stock Committee of the board testified (Rec., p. 133):

> "Q. Did you in making that re-assessment take into consideration what other property throughout the state was valued at?
>
> A. I did not."

Mr. Barnes, also a member of the board and chairman of the Capital Stock Committee testified (Rec., 115-116), having been asked in regard to equalization:

> "A. I have already answered it by saying in my testimony previous to this that we made no deductions for any purpose, equalization or anything else, in that assessment."

This evidence is absolutely uncontradicted and is reinforced by the records of the State Board (Rec., 1069) which show that the net assessment is the same as the assessed value in every case. Had the values in fact been equalized these two values could not be the same.

THE FAILURE TO EQUALIZE WAS A DENIAL OF DUE PROCESS OF LAW.

In *Railroad & Telephone Cases* v. *Board of Equalizers*, 85 Fed., 302, a case very similar to this, the court said on page 305:

> "If the Board of Equalization was under a duty to equalize, a mistaken view that such was

> not its duty could not change the law, and could not render a result legal which would otherwise be illegal. * * * The constitution is the paramount law of the land and its mandatory directions impose a duty upon the legislature in the exercise of its taxing power, and equally upon every administrative board or agency provided for the execution of the tax system. If there is a discrimination against this species of property, imposing an unconstitutional burden thereon, the result cannot be sustained; and this is equally so whether such result is due to erroneous action by the board, or to a defect in the legislation, in not requiring legislation and furnishing means whereby this might be made real and effective. If the legislature had, in terms, undertaken to exempt this board from its duty of equaliza'ion, no person of ordinary intelligence would make any question that such act would have been unconstitutional."

The board's duty being to equalize, equalization was one of the steps in its proceedings necessary to render its acts "due process of law." All similar corporations in the state were assessed at the time when the original assessment was made against the appellee, and a uniform percentage of 70 per cent. was adopted for purposes of equalization. When the State Board met to re-assess appellee and the nineteen other corporations whose assessments were complained of in the mandamus suit, they were the only corporations whose property was re-assessed. This re-assessment having been made according to the full value of its stock, while all others, except nineteen, were assessed at 70 per cent. caused the appellee to pay more than its due share of taxes, whereas the Illinois Constitution provides that while the general assembly may

tax persons and corporations owning or using franchises and privileges in such manner as it shall direct by law, yet such tax shall be "uniform as to the class on which it operates."

That the mere fact that the same basis was used in taxing these twenty corporations is not a substantial compliance with the law, can be seen from the fact that all similar corporations in the state which by law are to be taxed and assessed in the same manner and on the same basis, numbered three hundred and thirty-four in 1900. (Rec., 899-907.)

In *Davidson* v. *New Orleans*, 96 U. S., Mr. Justice Bradley said on page 107:

> "In judging what is due process of law, respect must be had to the cause and object of the taking, whether under the taxing power, the power of eminent domain or the power of assessment for local improvements, or none of these; and if found to be suitable or admissible in the special case it will be adjudged to be due process of law; *but if found to be arbitrary, oppressive and unjust, it may be declared to be not 'due process of law.'*"

The case at bar comes clearly within the meaning of the last sentence quoted, the tax is unjust because it makes the appellee pay a larger proportion of the total taxes according to the value of its property than other property in the state; it is oppressive for the same reason; and is arbitrary because it is not based on reason or merit, but is the outcome of a hard and fast rule of valuation which the Board of Equalization felt constrained to adopt, no deduction having been made for purposes of equalization.

Counsel for appellants say in their brief that appellee's contention is "predicated upon the theory that

equality and uniformity of taxation is guaranteed by the Federal Constitution in the Fourteenth Amendment."

Whether the Federal Constitution does or does not require such equality is not necessary to be determined for the decision of this case.

The State of Illinois has, as we have shown, provided, by its constitution and its laws, for equality of taxation, and has made that requirement mandatory.

The Fourteenth Amendment created no new rights but simply extended the protection of the Federal Constitution over rights of life, liberty and property that already existed under all state constitutions.

Mobile & O. R. R. Co. v. *Tennessee*, 153 U. S., 486.

We do not claim that the amendment requires each state to maintain a system of taxation based on equality, or that a system based on inequality would be unconstitutional; but we do contend that when a state had adopted a system of equality, then the Amendment does guarantee that the state shall so administer that law, that it shall not result in such inequality, as to cause one person or class to pay more than his or its fair share of taxation.

We think counsel for appellants have not grasped this distinction.

Their contention is, that as the amendment does not require equalization by the state, that the board's failure to equalize does not give appellee a right to go into a Federal Court.

Our contention is, that the state having adopted a rule of equality, the amendment requires that that rule of equality shall be for the benefit of all persons in the same class.

We, therefore, submit that inasmuch as the board denied to the appellee the benefit of its "judgment;" denied it a right to be heard; and denied it the advantage of equalization which would have greatly reduced the amount of taxes to be paid by it; the collection of the tax based on the reassessment will, for each of these reasons, deprive appellee of its property without "due process of law."

B.

APPELLEE HAS BEEN DENIED THE EQUAL PROTECTION OF THE LAWS.

That the duty of the State Board of Equalization to equalize assessments is a mandatory duty, has been shown above.

Appellee claims that, when the board fails to equalize assessments and it can be shown that such failure has resulted in a discrimination against a large class of corporations, of which appellee is one, it has been deprived of the equal protection of the laws.

That this failure to equalize this assessment has created a discrimination can not be better shown than by turning to pages 899-907 of the record where we find a list of all similar corporations assessed in 1900, setting out their amounts of stock, its values, etc.

The net assessments against all the three hundred and thirty-four corporations contained in that list, in-

cluding the twenty corporations, selected for re-assessment aggregated $4,808,630.

The original net assessment against these twenty companies aggregated $2,400,000, or nearly one-half of the total net assessments of all corporations so assessed.

The other three hundred and fourteen corporations were assessed $2,408,630.

It is fair to suppose, and a glance at the list will convince anyone of the fact that all other corporations assessable by the board, except railroads, were, in that original assessment, assessed on the same basis as these twenty.

The total net reassessment of the capital stock of these twenty corporations made pursuant to the mandate of the Circuit Court amounted to $32,733,457 (Rec., 1065-1069), or nearly fifteen times the total net assessment, for that year, on the capital stock of the other three hundred and fourteen corporations.

This clearly shows that the rule of valuation adopted by the board, and the failure to equalize the assessments, compelled these twenty corporations to pay fifteen times as much, in proportion to the actual value of their property, as any other like corporation in the state.

As we have shown the valuations adopted for the current assessment for the year 1901 represented the real judgment of the board, we turn to the list of similar corporations taxed in the same manner for that year and find that there were seven hundred and fifty-nine corporations so assessed. The total net assessment against all these 749, including these twenty com-

panies, amounted to $21,477,943, or eleven million dollars less than the net reassessment against these twenty companies alone made the previous year, pursuant to the writ of mandamus. (Rec., 1121-1139.)

In *Law* v. *People*, 87 Ill., 405, a case involving a discussion of the duties of the State Board of Equalization, the Supreme Court of Illinois said:

> "Whatever may be the statutory injunction as to making valuations of property for taxation, the controlling authority as contained in the Constitution is, it shall be so valued that every person and corporation shall pay a tax in proportion to his or its property. Under the circumstances, had the State Board set down the property of corporations at its fair cash value, as ascertained for the purpose of taxation, then such property would have been subjected to an increased taxation in proportion to property of other owners, which the Constitution positively inhibits. Observing the constitutional injunction rather than a literal compliance with the statute, the State Board equalized the valuations of that class of property at the same ratio adopted by local officers in fixing valuations of other property in their several localities. *Any other rule would have been most unjust as well as in contravention of the Constitution.*"

While this court has never passed on this exact question, the Circuit Court and the Circuit Court of Appeals have flatly held that a failure to equalize assessments which results in causing one person or class to pay more than his or its proportional share of taxation, is a denial of the equal protection of the laws.

County of San Mateo v. *Southern Pacific R. R. Co.*, 13 Fed., 722, was an action originally brought in the California State Courts to recover from the South-

ern Pacific Railroad Company, a California corporation, certain taxes levied upon its property, and was removed to the federal court, on the ground of a federal question having been raised.

The Railroad Company answered that by the California Constitution a mortgage or other obligation, by which a debt is secured, is treated, for the purpose of assessment and taxation as an interest in the property affected; that "except as to railroad and other quasi public corporations," the value of the property less the value of the security is to be assessed and taxen to the owner and the value of the security is to be assessed and taxed to its holder; and that franchise, roadway, etc., of railroads, operated in more than one county, are to be assessed by the State Board of Equalization at their actual value, and apportioned to the counties, cities or towns in which the roads are located, in proportion to the number of miles laid therein; that at the time the assessment of the property upon which the taxes claimed were levied, there existed a mortgage upon it executed for advancements made for its construction, etc., exceeding $3,000.00 a mile. That the State Board of Equalization assessed the property of the railroad company, its franchise, etc., at what was deemed to be their actual value without any deduction for the mortgages, etc.; that this was an unlawful discrimination against it as compared to individuals and was in violation of the Fourteenth Amendment.

On page 733 Mr. Justice Field said:

> "The Fourteenth Amendment to the Constitution, in declaring that no state shall deny to any person within its jurisdiction the equal protection

> of the laws, imposes the limitation upon the exercise of all the powers of the state which can touch the individual or his property, including among them that of taxation. Whatever the state may do, it can not deprive anyone, within its jurisdiction, of the equal protection of the laws. * * * It not only implies the right of each to resort, on the same terms with others to the courts of the country for the security of his person and property * * * but also his exemption from any greater burdens or charges than such as are equally imposed upon all others under like circumstances. Unequal exactions in every form, or under any pretense, are absolutely forbidden, and of course unequal taxation, for it is in that form that oppressive burdens are usually laid. It is not possible to conceive of equal protection under any system of laws where arbitrary and unequal taxation is permissible."

In *County of Santa Clara* v. *Southern Pacific Railroad*, and five other cases involving the same question, all reported in 18 Fed., 385, the facts are almost identical with those in the cases last cited. On p. 397, the court, Mr. Justice Field, said:

> "The first section of the Fourteenth Amendment places a limit upon all the powers of the state, including, among others, that of taxation."

And also:

> "The 'equal protection of the laws' to any one implies not only that the means for the security of his private rights shall be accessible to him on the same terms with others, but also that he shall be exempt from any greater burdens and charges than such as are equally imposed upon all others under like circumstances. This equal protection forbids unequal exactions of all kinds and among them, that of unequal taxation."

These cases came into this court on error and the

court took jurisdiction and decided them on the merits.

Santa Clara Co. v. *So. Pac. Ry. Co.*, 118 U. S., 394.

In *Railroad & Telephone Companies* v. *Board of Equalizers*, 85 Fed., 302, the property of the complainants was assessed at its full value while other property was assessed at not more than 75 per cent. of its actual value, and this was done by means of a rule of valuation adopted by the board.

The complainants contended that "the assessment is relatively out of proportion to the taxable value at which other species of property in the state are assessed, whereby the property of these companies is made to bear an undue proportion of the burdens of government, in violation of the Constitution of the State, and that they are deprived of equal protection of law under the Fourteenth Amendment."

On page 303, the court said:

> "An assessment of property which violates the provisions of a state constitution requiring uniformity of taxation, and which is a class discrimination, also deprives the owner of the equal protection of the law guaranteed by the Fourteenth Amendment."

In *Nashville, etc., Co.* v. *Taylor*, 86 Fed., 168, which was a case almost identical with the preceding case, Judge Clark said on page 186:

> "It may be true that the proposition that a tax statute or the tax laid under a statute is in violation of the constitution of the state, is not of itself necessarily sufficient to constitute a violation of the Fourteenth Amendment; but when, in addition to the violation of the state constitution, the stat-

> ute results in an arbitrary and oppressive discrimination in regard to a large class of citizens, or a large species of property, it is such class legislation, and such denial of the equal protection as renders it obnoxious to the Fourteenth Amendment, and the state constitution is important in determining what the rights of the citizens are and whether equal protection of the law is being denied."

Louisville Trust Company v. *Stone,* 107 Fed., 305, decided by the Court of Appeals, was a suit brought to enjoin the board of valuation and assessment of the State of Kentucky from assessing the property of the complainant at more than 70 per cent. of the face value thereof, that being the value placed on all other property, whereas the complainant's property was taxed at its full value.

On page 305 Mr. Justice Day said:

> "It may be conceded that, if the allegations of the bill are made out, there exists in respect to the property of complainant and others similarly situated a systematic intentional and illegal undervaluation of the property by the taxing officers of the state which necessarily affects an unjust discrimination against the property of which the plaintiff is the owner, and bill in equity will lie to restrain such an illegal discrimination and in such cases federal jurisdiction will arise because of the equal protection of the laws guaranteed by the Fourteenth Amendment."

The court in the above case mentions with approval the decision of Judge Clark in *Taylor* v. *R. R. Co., supra,* and says, that the grounds of federal jurisdiction are there carefully examined and fairly stated.

While this court has not, as we have said, passed upon the precise point, a case very similar to the one at bar was very recently before this court.

Coulter v. *Railroad Company,* 196 U. S., 599, was a suit by a Kentucky corporation against the members of the State Board of Valuation and Assessment, the only ground of federal jurisdiction being that under the tax laws of the State of Kentucky, as administered by its executive officers, the railroad company was deprived of the equal protection of the laws contrary to the Fourteenth Amendment. The Constitution of Kentucky required all property not exempt from taxation to be assessed at its fair cash value, and it was alleged that while the county assessors uniformly assessed property below its cash value, and that the Board of Equalization equalized the county assessments at a percentage not above eighty per cent. of the fair cash value of the property taxed, and that the defendants, who assess the franchise tax on the railroad company assessed the company's property in Kentucky at its full value.

These allegations made that case almost identical with the case at bar, omitting for the present the manner in which the assessment was made as set out in the statement of facts and our argument on the claim of a denial of due process of law.

The bill prayed for an injunction against the apportionment of the tax to the several counties, and to its certification, and also against its collection by the officers of the state.

On page 609 the court said:

> "Looking first at the assessment of the franchise, there is no such certainty that it was made on a different scale of value from that adopted elsewhere, as would warrant an attack upon it under the Fourteenth Amendment if otherwise that attack could be maintained."

In the case at bar, there is no doubt that the assessment was made on a different scale than that adopted elsewhere, but also on a different scale adopted by this very board as to other property.

Again the court said:

> "The undervaluation in the counties, looked at from the point of view just indicated, does not appear to have been such as to warrant the action of the court. It is admitted that it must have been systematic and intentional."

In the case at bar the evidence is clear that all other property in the state was equalized on a 70 per cent. basis, and that that was the intention of the officers.

On page 607 the court also said:

> "The other half of the plaintiff's case is that its franchise was valued at its full cash value. It might even require consideration, if necessary, whether it ought not to be shown further that the appellants, in valuing the franchise, consciously adopted a different standard from that which they understood to be adopted in the counties."

In the case at bar there can be no doubt that there was a "conscious adoption" of a different standard from the one adopted by the county boards, and also a "conscious adoption" of a different method by this very board in regard to appellee's property from the method adopted by it in regard to all other property.

The facts in the case at bar being not disputed are admitted, and those facts answer every objection that the court urged in the above case as to why the injunction should not have been granted and we submit that we have brought the case at bar clearly within the reason of the above decision.

The court held in that case that in fact there was no violation of the Fourteenth Amendment, and considered the evidence to see if the discrimination complained of was a violation of that amendment; and from the fact that the court did consider the evidence it is fair to infer, that, had the evidence shown such a discrimination, as exists in the case at bar, the court would have held that the constitutional guaranty had been violated.

This court, however, has decided cases which on principle are very like the case at bar, in regard to discrimination against National Banks.

Section 5219 of the Revised Statutes of the United States provides that National Bank stock may be taxed by the states, but that it shall not be taxed "at a greater rate than other moneyed capital."

This statute, while limiting the right of the state to put this particular kind of property in a class by itself for purposes of taxation, means nothing more or less than that the state shall not deny to National Banks the equal protection of the taxing laws, and it has repeatedly been held by this court that the guaranty of equal protection, contained in that act, is violated, if any injurious discrimination results either from the state law itself or by the administration of a valid law.

Cummings v. *National Bank*, 101 U. S., 153, was an action by a National Bank to restrain the Treasurer of Lucas County, Ohio, from collecting a tax against it based on an assessment of its shares of stock at their full value, while other personalty was assessed at sixtenths of its value. There was a constitutional re-

quirement of equal taxation in Ohio. similar to the provisions of Illinois.

On pages 157 and 158 the court said:

> "We are of the opinion that when a rule or system of valuation is adopted by those whose duty it is to make the assessment, which is designed to operate unequally and to violate a fundamental principle of the constitution, and when this rule is applied not solely to one individual, but to a large class of individuals or corporations, that equity may properly interfere to restrain the operation of this unconstitutional exercise of power."

National Bank v. *Kimball,* 103 U. S., 732, was a similar case and on page 735 the court said:

> "When the inequality of valuation is the result of a statute of a state, designed to discriminate against any class of persons, or any species of property, a court of equity will give appropriate relief, and also, where though the law itself is unobjectionable, the officers who are appointed to make the assessments combine together and establish a rule or principle of valuation, the necessary result of which is to tax one species of property higher than others and higher than the average rate, the court will also give relief."

In *Stanley* v. *Supervisors of Albany,* 121 U. S., 535, Mr. Justice Field said on pages 550-551:

> "When the over-valuation of property has arisen from the adoption of a rule of appraisement which conflicts with constitutional or statutory direction, and operates unequally not merely on a single individual, but on a large class of individuals or corporations, a party aggrieved may resort to a court of equity to restrain the excess upon payment or tender of what is admitted to be due."

San Francisco National Bank v. *Dodge,* 197 U. S.,

70, involved the right of the State of California to tax shares of National Bank stock on a different basis than that on which State Bank stock was taxed.

Under the law of California shares of bank stock must be valued at their full cash value, which is defined to mean their "market value."

The agreed statement of facts showed that certain things entered into the valuation of National Bank stocks which did not enter into the valuation of State Bank stocks, and the court said on page 81:

> "From this analysis it results that in one case, that of National Banks, not only the value of all the tangible property, but also the value of all the intangible elements above referred to is assessed and taxed, whilst in the other case, that of State Banks and other money corporations, their property is taxed, but the intangible elements of value which we have indicated are not assessed and taxed, the consequence being to give rise to the discrimination against National Banks and in favor of State Banks and other moneyd corporations forbidden by the act of Congress."

It was also expressly decided that though "no conflict necessarily arises between the federal statute and a state law solely because the latter provides one method of taxation for State Banks and another method for National Banks, if there is no actual discrimination against the shares of the National Banks resulting from the difference in method," still, "if, irrespective of the face of the law, the system created by the state law in its practical execution produces an actual and material discrimination against National Banks it does conflict with Sec. 5219, Rev. St., U. S., and is void."

Sec. 5219, Rev. St., U. S., is only applicable to National Banks and these decisions hold that any method of making them pay more than their fair proportion of taxes is in conflict with that statute whether the tax is the result of the law itself, or of its administration.

The Constitution of Illinois is for the benefit of all citizens and it provides that there shall be equality of taxation, and any statute of that state which failed in itself to produce equality would be unconstitutional, and, following the reasoning of the above cases, the administration of a law producing inequality would make its operation illegal, even though the law itself was valid.

The act of the State of California was a denial of the equal protection of the tax laws of that state to the National Bank and therefore its act was unlawful as being against the Act of Congress, and the act of the State of Illinois in the administration of its laws by its officers denying to the appellee the protection of the constitutional requirement of equality was a denial to the appellee of the equal protection of the laws of Illinois, and is therefore within the prohibition of the Federal Constitution.

The Board of Equalization is by law ordered to equalize assessments. The evidence showed that all other assessments were equalized on a uniform percentage of seventy per cent. or less, while appellee's property was assessed at its full value, and that this assessment was not equalized with other assessments. It therefore follows, that there has not been the same application of the law to the property of appellee as

was applied to all other property, and this discrimination, in the application of the law, has resulted in the appellee becoming liable, not only for a greater amount of taxes in proportion to the real value of its property than all others in the state, but also for a greater amount than it would have had to pay, had the board equalized this reassessment.

It is clear, therefore, that the appellee has been denied the equal protection of the laws contrary to the provision of the Fourteenth Amendment.

We submit, therefore, that the appellee's property is about to be taken from him by the State of Illinois without due process of law and that it is also denied the equal protection of the laws of Illinois contrary to the Fourteenth Amendment.

SHOULD THIS COURT, HOWEVER, DETERMINE THAT THE FACTS SHOWN DO NOT SHOW A VIOLATION OF CONSTITUTIONAL RIGHTS BY THE STATE, WE SUBMIT THAT THIS COURT SHOULD STILL TAKE JURISDICTION AND DETERMINE THE CASE ON ITS MERITS.

Jurisdiction of the federal courts, in cases of this kind, depends upon whether or not a constitutional question is raised in good faith or not, and not on whether the facts, as they may ultimately turn out to be, make a case where there has, in fact, been a violation of constitutional rights.

The court has to take jurisdiction to decide that very question.

Were this not so there would be no way of raising such questions, for one coming into this court would be met on the threshold with the claim that "there is

no violation of the constitution here," and if the court could not take jurisdiction to decide that question, no constitutional question could ever be raised originally in a federal court, unless the court had jurisdiction of the parties, irrespective of the subject matter.

This rule is clearly laid down by this court in *City Railway Co.* v. *Citizens Railroad Co.,* 166 U. S., 557.

On page 562 in the above case Mr. Justice Miller said:

> "There can be no doubt that the Circuit Court had jurisdiction, notwithstanding the fact that both are corporations of the State of Indiana. It should be borne in mind in this connection that jurisdiction depended upon the allegations of the bill and not upon the facts as they subsequently turned out to be. * * * The gravamen of the bill is that * * * the Citizens Railroad Company had become vested with certain exclusive rights in the City of Indianapolis either in perpetuity or for the term of thirty or thirty-seven years, which the city had attempted to impair by entering into a contract with the City Railway Company to lay and operate a railway upon the same streets. All that is necessary to establish jurisdiction of the court is to show that the complainant had or claimed in good faith to have a contract with the city which the latter had attempted to impair."

To the same effect is the decision in *Penn. Mutual Ins. Co.* v. *Austin,* 168 U. S., 685-695.

> "The contention here made, however, is, not that the bill without color of right alleges that the state law and city ordinances violate the Constitution of the United States, but that such claim as alleged in the bill is unsound. The argument then is that the right of direct appeal to

this court does not exist where it is claimed that a state law violates the Constitution of the United States unless the claim is well founded. But it can not be decided whether the claim is meritorious without taking jurisdiction of the case."

This same distinction was also clearly made by Mr. Justice Day when he was on the Circuit Court, in *Louisville Trust Co.* v. *Stone,* 107 Fed., 305.

On page 309 therein he said:

"Notwithstanding the failure of the complainant to establish its relief upon the ground of federal jurisdiction, alleging that the unjust discrimination against it in assessing its property at its full value while other property in the state was assessed at 70 per cent. of its face value, thus depriving complainant of the equal protection of the laws under the Fourteenth Amendment, the jurisdiction of the court having been invoked for that purpose the bill may be retained to administer full relief concerning the assessment upon the property of complainant upon the ownership of stock in the Mattingly Company. *If the claim to relief, clearly within the federal jurisdiction, is fair and colorable not fictitious and fraudulent, jurisdiction attaches, although the ultimate decision may be against the right claimed."*

Judge Clark draws the same distinction in

Nashville, etc., Ry. Co., v. *Taylor,* 86 Fed., 168-178.

"Whether there is a claim which presents a federal question, and whether that claim is well-founded are different and distinct questions. The one goes to jurisdiction and the other to the merits of the case. It is true the question must be raised, and it is equally true that the court must take jurisdiction before it can determine whether the right is valid or well founded."

The allegations of the bill are clear and concise, and it surely can not be said that they are fictitious and fraudulent especially now that one of the federal judges has considered the question favorably to appellee.

We think, therefore, the federal court had jurisdiction.

THE ASSESSMENT OF APPELLEE'S PROPERTY WAS GROSSLY EXCESSIVE.

This case being, therefore, within the equitable jurisdiction of this court and the jurisdiction being properly invoked as above set forth, this court will grant relief to this appellee on the ground that this assessment complained of is so grossly excessive as to amount to a fraudulent assessment.

The Supreme Court of Illinois said in the mandamus case in which this reassessment was ordered to be made:

> "We have repeatedly held that an assessment may be impeached on the ground that property has been fraudulently assessed at too high a rate. * * * The converse of this proposition must be true, and an assessment may be impeached where the assessment has been fraudulently made at too low a rate."

This same rule is laid down in nearly every case heretofore cited in this brief, both by this court and the Circuit Courts.

This rule means that a valuation for purposes of an assessment must be approximately the real value and that no assessment can be a real assessment unless it is fair, and is honestly made.

If the assessment here complained of were approx-

imately right, we could not complain even if there was a slight over-valuation, but a consideration of the evidence will show that the property of this appellee is most grossly over assessed.

In making this reassessment the board, as we have shown in a former portion of this brief, took nothing into consideration but the values contained in the record of the mandamus suit, considering themselves bound to do so. Such a proceeding as this could hardly be expected to result in fairness to either this appellee or to the state as the stock quotations contained in the record in the mandamus case were for March 31st and April 2nd only, and could hardly be said to represent the value of a stock for purposes of assessment for a year. The average price would be the only fair way, if we are to rely on stock quotations alone. But even such an average valuation could not be fair to any one. The earnings and many other things should be taken into consideration. No sane person would contend that a valuation which produced a tax that would take more than double the net earnings of the property to pay would be a fair tax, yet that is just what was done in this case. The tangible property of this company is assessed for the year 1900 as $277,813 on which appellee paid a tax of nearly $25,000, and the tax based on the reassessment of $3,531,487, the rate being 8.817 per cent., would be approximately $300,000, making the total taxes for that year about $325,000.

The total earnings of this company from every source amounted to $1,041,284.81 and the expenses were $871,756.27, leaving $169,528 for net earnings, exclu-

sive of tax charges. (Rec., Consolidated Traction Company Case, 34, 35.) It can be seen at a glance that such a tax, if enforced, would amount to confiscating appellee's property.

The total disregard of appellee's rights shown by the board in making this assessment cannot be better illustrated than by mentioning the fact that all similar corporations in the state, 334 in number, were assessed in the original assessment of 1900 at $4,808,630, including the assessment at that time rendered against appellee, while this appellee is *reassessed* at nearly three-fourths of that total amount. However, it can plainly be seen that the stock in a company which earns $169,528 net without deducting taxes cannot be very valuable and neither can its franchise.

Capitalizing this sum on a 6 per cent. basis, it would be worth about $2,825,000. Equalizing that sum on a seventy per cent. basis we would have its equalized value at about $1,977,500. One-fifth of this sum is the assessed value, or less than $400,000. For fear six per cent. is too high a basis on which to capitalize the earnings, let us go to the other extreme and capitalize it on a one per cent basis and we would have less than $2,400,000 as the net assessment. Even this absurdly low rate only brings the net assessment to two-thirds of the reassessment complained of.

The interest and rental charges which this Consolidated Company is liable to pay every year amounts to $361,620 (Rec., Consolidated Traction Case, 49), or more than twice its net earnings. These charges are now paid by the Union Traction Company under an operating agreement, and we only call attention to

them to show how little value the stock, including the franchise, of this appellee, had.

Surely, therefore, this reassessment is so manifestly unfair that this court will grant relief against the collection of the tax based thereon.

III.

THE TESTIMONY OF THE INDIVIDUAL MEMBERS OF THE BOARD WAS COMPETENT.

Appellants insist that there is no evidence to sustain this judgment inasmuch as the only evidence to substantiate the allegations of the bill is the testimony of members of the State Board of Equalization, and that they were incompetent witnesses in that regard, the claim being that such members can not testify as to the operations of their minds at the time they made this assessment, and as to what elements they took into consideration and as to how they reached their results.

Reliance is placed on the following sases:

Wright v. *City,* 48 Ill., 285-92.
Quick v. *River Forest,* 130 Ill., 323-25.
Ryder v. *Alton,* 175 Ill., 94-100.
Washington Park v. *Chicago,* 219 Ill., 323-5.
Packet Co. v. *Sickels,* 5 Wall., 580-93.
Fayerweather v. *Ritch,* 195 U. S., 276-307.
Coulter v. *R. R. Co.,* 196 U. S., 599-610.

We need not discuss the Illinois cases above cited for they are not only easily distinguished from the

case at bar, but the Supreme Court of Illinois has passed on this very question in the mandamus case.

State Board of Equalization v. *People,* 191, 524.

On page 551 of that case the court said:

> "This is a civil suit, and the members of the board were competent witnesses, and if it were true that the capital stock, including franchise, of said corporation were about to be or had been fairly and honestly valued and assessed, it would have been an easy matter for them to have explained to the court the methods pursued by them in reaching the results which they obtained, and to have shown to the court that such results were proper and legal."

This being the rule in Illinois the federal courts will follow it.

U. S. Revised Statutes, Sec. 858, after providing that no witness shall be incompetent in certain cases, provides:

> "In all other respects, the laws of the state in which the court is held shall be the rules of decision as to the competency of witnesses in the courts of the United States in trials at common law, and in equity and admiralty."

In *Colgate* v. *Compagnie Francaise,* 23 Fed., 82, it was said:

> "Under the existing practice in courts of law in this state, a plaintiff can obtain the evidence of a defendant upon the trial by examining him as a witness and can obtain a production of books and papers both before and upon the trial. * * * The practice that thus prevails is the practice of the federal courts also by force of Secs. 724, 858, 914 Rev. Stat."

We have been unable to find any language of this court which could by any possibility be construed as

opposed to the practice adopted in the case at bar except *Fayerweather* v. *Ritch*, 195 U. S., 276-307 and *Coulter* v. *R. R. Co.*, 196 U. S., 599-610.

The former case arose in a case where the question was whether or not a certain judgment was *res judicata*, and it was there sought to prove by the judge who had tried the former case, a jury having been waived, what matters be considered and passed upon in deciding the case.

In the case at bar we are not trying to show the process of the minds of the board members, but to show that in this assessment they did not exercise their minds at all, and to show that in making this assessment they were not masters of their minds, but were coerced or considered themselves to be; and to show an affirmative fact, viz.: that the board did not equalize.

Packet Co. v. *Sickles*, 5 Wall., 580, cited by counsel is the same kind of case.

The case of *Coulter* v. *R. R. Co.*, 196 U. S., 599, was a case where the facts were very similar to those in the case at bar and there the members of the state board were put on the stand to show that a scheme existed to over-assess complainant.

On page 610 the court said:

> "Inequality, we repeat, is nothing unless it was in pursuance of a scheme. To make out that scheme the anomalous course was followed of putting members of a tribunal established by law upon the witness stand to testify to the operations of their minds in doing the work intrusted to them. *Fayerweather* v. *Ritch*, 195 U. S., 276-306-307. But the prevailing testimony was that no such scheme was entertained."

The same distinction drawn between the *Fayerweather* case and the one at bar applies here, and although the court used the word "anomalous," it considered the evidence and its weight in reaching its conclusion. The assessment here is also the result of such a scheme as the court had in mind.

The same procedure was had in the following cases in this court and in the Circuit Courts, and apparently no objection was seen to the testimony as the cases were decided largely on this testimony.

Trustees Cincinnati Southern Railway v. *Guenther,* 19 Fed., 395, was a case similar to the one at bar and the respondent, a member of the board of equalization was a witness in the case as to the proceedings of the board. The question of his competency was not apparently raised, but the court evidently considered his testimony as competent, and on page 399 said:

> "The record in this case under consideration does not show very clearly what particular method of valuation was followed in assessing the value of railroad property, or that of other property, but it does appear that real estate was as a rule taxed upon a valuation less than its real value. *The respondent* in his deposition says, at a rate less by 10 per cent. than its real value; but from the other proof in the case and from what a court may judicially know of the history of tax assessments in this region of the county, we think that lands in Roane County were taxed at a valuation on the average of one-fourth below their real value."

Louisville Trust Co. v. *Stone,* 107 Fed., 305, was a case where the complainant sought to enjoin the collection of taxes on the ground of inequality. The affidavit of one Geo. M. Willis, a member of the State

Board which assessed the property tending to show that all other property was assessed at 70 per cent. of its value was offered in evidence by complainant. On the part of the defendants, affidavits of four members of the State Board and of the secretary of the board were offered. The question of the competency of these witnesses was not raised, but the court based its holding on the strength of their testimony, evidently considering it not only competent, but the best evidence.

First National Bank v. *Treasurer Lucas County, O.*, 25 Fed., 749, was a case involving a discrimination in the assessments of stocks in National Banks in favor of stock in State Banks resulting in inequality. The question of the competency of the evidence by members of this board was apparently not raised, but the evidence was in the record and was considered.

On page 759 the court in its opinion says:

> "In 1883 the local board of equalization determined, in consultation, to assess it in the same way; but, objections being made that perhaps there was no power or was danger in taking a formal resolution to that effect, they agreed to let the action rest in a 'mutual understanding,' to so assess it and without formal action. Some witnesses say a motion was put and carried, but this was perhaps not quite correct and the matter was left to a mere 'understanding' among the members that they would direct the auditor to so instruct the local assessors, and when it came to equalization, they themselves would act on that 'understanding.' When the assessors assembled under the call of the auditor some witnesses say he gave the instruction to assess at six-tenths; he says he did not, and we think he is the most accurate; and that while he and they agreed that it should be so assessed, to make all property equal in taxa-

> tion, he declined to so instruct them, but referred them to the laws of Ohio for their duty."

It is plain that as to what occurred in both the meeting of the local board of equalization and at the meeting of the assessors, the members were allowed to testify, and the case was determined on their testimony.

In *Pelton* v. *National Bank,* 101 U. S., 143-147, the only witness was the auditor of the county and he was allowed to testify as to the proceedings of the local board of equalization, he being as auditor, a member thereof. The question of his competency was not raised, but as he was the only witness the court must have considered him a competent witness for there was no other evidence on which to base the decree.

Cummings v. *Bank,* 101 U. S., 153-161, was a case where it was sought by injunction to prevent an assessment against National Banks, which was claimed to be illegal.

On page 161 the court in discussing the evidence says:

> "This is shown by the testimony of four or five district assessors, by the auditor of the county for the year 1896 and for several previous years, and who had long been an employe of that office."

All these witnesses testified as to how the valuations were arrived at and the unfair valuations made by them was the basis of the court's decree.

Pittsburg, etc., Ry. Co. v. *Backus,* 154 U. S., 421-432.

This was a case in which the Secretary of State, a member of the Board of Equalization, was called as a witness as to how the valuations were arrived at.

The court says on page 435:

> "Here the question determined by the State Board was the valuation of certain property. The determination can not be overthrown by the testimony of two or three witnesses that the valuation was other than that fixed by the board. It is true such testimony may be competent, and was received in this case because, taken in conjunction with other testimony it might establish fraudulent conduct on the part of the board sufficient to vitiate its determination."

In *Fargo* v. *Hart*, 193 U. S., 490, the case of *Railway Company* v. *Backus* above cited was cited and the court mentions the fact that in that case the Secretary of State, a member of the Board of Equalization had been a witness, and says that on his testimony the courts finding was correct.

We see, therefore, that although there has been no direct determination of this question by this court, that in nearly every case of the kind, the same witnesses were allowed to testify, and that practice has at least had in the past the silent approval of this court.

But in all the cases where a different rule has been laid down or inferred, the attempt has been made to show that the judgment of the tribunal was wrong, or that their reasoning was faulty, while in this case the appellee is seeking to show that there was no "judgment," and that no reasoning or mental process led up to it and the fact that the board did not equalize.

Were the members of the board not competent witnesses in such a case, how could any act of such a board, which might take away one's property or so tax it as to amount to confiscation, be set aside? They might conspire among themselves to so tax the appel-

lee as to destroy it, and yet there be no possible way of proving it, and although the statement that "fraud vitiates all things" is as old as equity, there would be no way of proving that fraud, unless it could be inferred from attending circumstances. In this case, however, when we come to draw inferences from the fact that the board met a few weeks later and re-assessed this same property at less than one-half the amount at which it had been assessed under the instruction or supposed instruction of the state court, we are met by another of appellant's objections that it is incompetent to show the amount of the assessment for 1901, made a month after the re-assessment for 1900, or to infer therefrom that the *reassessment* was excessive.

We will not dispute the general proposition that evidence of collateral facts is inadmissible, but like all good rules it has its exceptions.

Mr. Greenleaf in his work on Evidence, says, Sec. 53:

> "In some cases, however, evidence has been received of facts which happened before or after the principal transaction, and which had no direct or apparent connection with it; and, therefore, their admission might at first view seem to constitute an exception to this rule. But those will be found to have been cases in which *knowledge* and *intent* of the party was a material fact, on which the evidence, apparently collateral, had a direct bearing and was therefore admitted."

This distinction is so obvious and the facts in the case at bar so clearly bring it within the exception to the rule that we will not cite any authorities.

If both the contentions of appellants are right, a

court can neither hear the testimony of those who are best acquainted with the facts in controversy, and in fact the only persons who are cognizant with the affair, nor can it look beyond the assessment itself, but must shut its eyes to the glaring fact that such widely diverse valuations made by the same men, of the same property and on almost the same day, cannot both be the real judgment of the board, but must be the result of conspiracy, fraud or coercion.

It is stated in appellant's brief that all the evidence on this subject is the testimony of four members out of a board of twenty.

This statement it not quite accurate.

It is true that the board has twenty members, but it is also true that its work is all done by committees. (Rec., pp. 104, 124.)

The capital stock committee to which is confided the duty of capital stock assessments is composed of seven members (Rec., p. 104). Most of the work was done by Mr. Hirscheimer and Mr. Cruttenden (Rec., p. 135).

The board simply adopts the report of the committee as it could not get its work done otherwise. (Rec., 124).

In this court four of the members of this Capital Stock Committee, including the two who did most of the work were witnesses and all testified positively as to the matters involved herein.

A fifth member of the board was called by appellants (Rec., p. 300) and testified as to certain matters, but was not questioned as to the matters complained of.

The natural supposition is that the appellant's counsel were familiar with what his testimony would have been on these subjects and refrained from examining him on that subject.

Thus instead of four out of twenty of the board members, five members of the Capital Stock Committee of seven were before the court. The thirteen members of the board who were not on the committee could have no knowledge of the proceedings before the committee, and, as we have shown in this case, they simply adopted the valuations made by the committee, under the board as a witness (Rec., 300) and examining him a suspension of the rules and without argument.

We also submit that the appellants have waived any objection they might have had to the competency of such evidence by calling one of the board members of the board as a witness (Rec., 300) and examining him as to what he took into consideration in making the assessment for 1900.

THE CIRCUIT COURT DID NOT RE-ASSESS THIS PROPERTY.

Counsel for appellant state that the circuit judge erred in that he sought to substitute his judgment for that of the State Board of Equalization and has assessed the capital stock of these appellees, by causing them to pay certain amounts to the state which, according to his view of the case, it was equitable they should pay. Counsel for appellants lose sight of the fact that this was only done in order to do equity, and as a condition precedent to granting the injunction.

It was in no sense an assessment by the court, but was simply an injunction restraining the collection of a void tax.

We therefore respectfully submit that the judgment of the Circuit Court was correct and that it should be affirmed.

Respectfully submitted,

WM. W. GURLEY,
Of Counsel for Appellee.

ISAAC M. JORDAN,
ARTHUR DYRENFORTH,
HOWARD M. CARTER,
Solicitors for Appellee.

APPENDIX.

IN THE CIRCUIT COURT OF THE UNITED STATES,
Northern District of Illinois.

Chicago Union Traction Company,
vs.
Samuel B. Raymond, County Collector, *et al.*
Chicago Edison Company,
vs.
Samuel B. Raymond, County Collector, *et al.*
Chicago City Railway Company,
vs.
Samuel B. Raymond, County Collector, *et al.*
South Chicago City Railway Company,
vs.
Samuel B. Raymond, County Collector, *et al.*
Peoples Gas Light & Coke Company,
vs.
Samuel B. Raymond, County Collector, *et al.*
Chicago Telephone Company,
vs.
Samuel B. Raymond, County Collector, *et al.*
Chicago Consolidated Traction Company,
vs.
Samuel B. Raymond, County Collector, *et al.*

GROSSCUP, *Circuit Judge:*

The complainants are utility corporations, organized under the laws of Illinois, and operating in Cook

County, Illinois. The defendants are the County Treasurer of Cook County, the local Town Collectors, and in the first two cases, the State Board of Equalization. There exists in none of the cases, therefore, the diversity of citizenship that confers jurisdiction on the federal court.

The substance of the bill in each case is as follows: That at the annual meeting of the State Board of Equalization for 1900, the capital stock of the complainant corporations, including their franchises, was assessed according to law; that on the basis of such assessments the taxes for the year 1900 were paid; that subsequently upon the relation of certain citizens of Illinois, mandamus proceedings were instituted in the Circuit Court of Sangamon County against the State Board of Equalization, charging that the board had, in respect of these assessments, illegally neglected and refused to discharge its duty, in that such assessments fell far below the real value of capital stock of the complainant companies; that on or about the first day of May, 1901, final judgment was rendered in said cause, directing a writ of mandamus to issue against the members of the State Board, requiring it to convene forthwith to reassess such capital stock, including the franchises, at their fair cash value, as of the first of April, 1900, "arriving at such valuation from the best information obtainable, taking into consideration, among other things the market value of the shares of stock of each corporation and the total amount of its indebtedness, except for current expenses." Upon appeal to the Supreme Court of Illinois this decree was affirmed. 61 N. E., 339. But

in neither the Circuit Court nor the Supreme Court were the complainant corporations parties to the suit.

In pursuance of this mandate, the State Board of Equalization for the year 1901, successor in office to the board of 1900, but largely changed in individual membership, at its regular meeting for the year 1901 purported to reassess the capital stock, including franchises, of the complainant corporations; and it is to restrain the collection of additional taxes on the basis of these reassessments that these suits are brought.

In substance, it is averred that such reassessments, if enforced, would deprive the complainant corporations of their property without due process of law, and deny to the complainant corporations the equal protection of the laws. Upon these provisions of the Constitution of the United States the jurisdiction of the federal courts is predicated—the contention being that the cases arise, within the meaning of the Judiciary Act, under the Constitution and laws of the United States.

Upon a previous motion in the traction company cases pending in the Southern District (112 Fed., 607) we held, that stock market quotations, though significant indicia of the value of capital stock, are not the absolute, ultimate measure of such value; that the real purpose of the Illinois statute is to reach capital stock subject to taxation, in accordance, not with the stock market quotation upon segregated shares of stock upon a single day in the year, but according to its stable value as an entirety; that such was the real purpose and judgment of the Supreme Court of the state in the mandamus case; whence it followed that the said board, itself an independent tribunal, was not

shorn by the decision of the State Court of its right and duty, upon its own judgment, to ascertain the real value of the property to be assessed.

The fundamental question of fact involved in the present hearing in each of these cases is this: Did the State Board of Equalization, without fraud or mistake, and free from coercion, exercise its judgment in the making of the reassessments complained of? In solving this question we have looked into, not only the reassessments complained of, but also the assessments for the year 1901. A comparison between these records of the State Board is significant. In the case of the Chicago Union Traction Company, the assessment for the year 1901—capital stock and tangible property aggregated—falls from a little over fourteen millions of dollars (the reassessment for 1900) to about eight millions, two hundred and fifty thousand dollars, a loss of about forty per cent.

In the case of the Chicago Consolidated Traction Company, the depreciation is from a little over three millions, seven hundred and fifty thousand dollars to about two millions of dollars, or about forty-seven per cent.

In the case of the People's Gas Company, the depreciation is from over twelve millions and a half to about eight millions and a half, or about thirty-two per cent.

In the case of the Chicago City Railway Company, the depreciation is from a little over six millions to a little over four millions and a quarter, or about thirty per cent.

In the case of the Chicago Telephone Company, the depreciation is from a little less than two millions,

six hundred thousand dollars to a little over one million, seven hundred thousand dollars, or about thirty-four and one-half per cent.

In the case of the Chicago Edison Company, the depreciation is from a little over two millions, four hundred thousand dollars, to a little over one million, three hundred thousand dollars or about forty-six per cent.

In the case of the South Chicago City Railway, the depreciation is from nearly five hundred seventy thousand dollars to a little less than three hundred thousand dollars, or about forty-seven per cent.

These assessments, so widely divergent, were upon the same properties, by the same board, entered almost on the same day. The dates as of which they spoke were, it is true, a year apart; the one being of the first of April, 1900, the other of the first of April, 1901. But the tide of stock quotations and the tide of current values, were higher on the latter day than the former. If between these two assessments, a considerable disparity should exist, the increase ought to be found in the assessment for 1901, and not in that for 1900.

I can comprehend a possible state of facts showing that neither of these assessments embodied the real judgment of the State Board. I can comprehend also a state of facts showing that either one or the other may have embodied the board's real judgment. But both cannot be vindicated. In the very nature of things, one or the other has been made up under some species of fraud, mistake or coercion; and a few pregnant circumstances convince us that whatever may be said of the assessment for 1901, the reassessment for

1900 cannot be accepted as the independent judgment of the State Board.

One of these is this: The reassessment of each of the complainant corporations for 1900 is a close approximation to the aggregate of its indebtedness and its stock value, as measured by the stock market quotations for April 1, 1900. The board seem to have adopted as its own standard in the making of these reassessments the stock exchange record of that one day of the three hundred and sixty-five, and to have restricted its function to the mere arithmetic of adding up the figures of that day's record. In so doing the board followed, possibly, the interpretation put upon the mandate by the state circuit judge; or the board may, in the exercise of its own judgment, have so interpreted the mandate; or it may have felt that under all the circumstances, an assessment according to that standard was the safer course for the members personally. But, on either supposition the significance of the fact is not lessened. It goes far toward convincing us that the objective of the board was not the real value of the properties as entireties, but simply what the stock market for one day indicated the value to have been.

What was the real value in fact, of the property reassessed? A determination, approximately of this fact will aid materially in determining whether the board in the adoption of the standard referred to exercised its real judgment as an independent tribunal in search of the value of the stock as an entirety. To arrive at such value I have looked into the earnings of the several complainants for the year 1900. The disclosures are made from the books of the company

kept for the information of the stockholders. They seem to have been kept with no reference, prospectively, to tax valuations. In the absence of better data, I feel justified in accepting them for the purposes of this motion—subject of course, to any inquiry that may affect their accuracy. Except in the case of the Union Traction Company, it is not shown whether the net earnings thus reported have made allowance for current depreciation in the tangible property. In the case of the Union Traction Company, by my direction, an annual reduction, equal to six per cent. of the current value of cars, tracks and machinery has been allowed. This is not, in my judgment an excessive allowance. Railway companies make such reduction each year on the book value of their cars; and it is the rate for depreciation adopted by the Tax Commissions of some of the states.

Nor do the net earnings reported take into account the increase of tax for the year 1900, occasioned by the reassessments as they may be finally modified. It is only fair that the earnings should be reduced by such increase—itself an omitted fixed expenditure—before they are used as the basis of capitalization.

Several other elements in a fair calculation, based on net earnings, have raised questions to which I have given careful consideration. The first of these is upon what rate of the true net earnings the aggregate value of the property should be capitalized. I have fixed the rate at six per cent. That is the rate adopted in states where assessments are made upon the basis of net earnings. It is less than the rate that some advanced advocates of municipal ownership are willing to guarantee to investors in securities of this char-

acter. The rate adopted is, I think, justified by the considerations that usually attend the real investors' purchase of stock. Commonly, net earnings are applicable, first, to preferred securities, such as bonds or preferred stock. We may assume that the preferred half of a capitalization that earns as an entirety, six per cent. may be considered worth par upon the basis of five per cent. But when it comes to second half, involving as it does, much more the uncertainties of the future, the security will not commonly be regarded as good at par upon the basis of even six per cent. unless there is a margin of earnings over and above the dividends paid; for no investor feels secure of a dividend at six per cent. next year, simply because the company has earned it this. It is probably fair to say that net earnings, accruing through several years, at the rate of five per cent. upon the preferred half of the securities, and of seven per cent. upon the remaining half, would make both securities worth their par value; and this would be equivalent to six per cent. upon the whole.

Another element entering into the calculation is this: Should the capitalization thus arrived at be equalized to the assessment of the other property of the state? The record convinces me that the assessment of other property throughout the state, including railroad, for the year 1900, as finally equalized by the State Board of Equalization did not exceed seventy per cent. of the cash value; and that such standard was not adopted by the State Board unintentionally or through inadvertence, but deliberately as a means of arriving at an equalization of taxable values generally throughout the state. May the Board now, or the

court in review of the board, upon these reassessments disregard this standard? I think not, and to that question have given careful inquiry.

The Illinois law, constitutional and statutory, upon the subject is substantially the following:

"The general assembly shall provide such revenues as may be needful by levying a tax by valuation so that every person and corporation shall pay a tax in proportion to the value of his, her or its property, such value to be ascertained by some person or persons to be elected or appointed in such manner as the general assembly shall direct and not otherwise; but the general assembly shall have power to tax * * * insurance, telegraph and express interests or business, venders of patents, and persons or corporations owning or using franchises and privileges in such manner as it shall from time to time direct by general law, uniform as to the class upon which it operates." Const. 1870, art. 9, p. 1.

"Real property shall be valued as follows: First, each tract or lot of real property shall be valued at its fair cash value estimated at the price it would bring at a fair voluntary sale." Hurd's Rev. St. 1899, c. 120, p. 4.

"Personal property shall be valued as follows: First, all personal property, except as herein otherwise directed, shall be valued at its fair cash value. * * * Fourth, the capital stock of all companies or associations now or hereafter created under the laws of this state, except those required to be assessed by the local assessors and hereinafter provided, shall be so valued by the State Board of Equalization as to

ascertain and determine respectively the fair cash value of such capital stock, including the franchise, over and above the assessed value of the tangible property of such company or association," arriving at such valuation from the best information obtainable, taking into consideration, among other things, the market value of their shares of stock, and the total amount of their indebtedness. Hurd's Rev. St. 1899, c. 120, p. 3; *State* v. *State Board of Equalization* (Ill.), 61 N. E. 339.

These provisions, read together, disclose plainly enough the policy of the state respecting the listing of property for taxation. The General Assembly is given power, it is true, to set, as a class apart, persons or corporations owning or using franchises and privileges, and so doing, to tax them either upon a valuation, or at a ratio, different from the other classes of property of the state. But until the legislative will is thus exercised all the property of the state is to bear uniformly the burdens of taxation. Uniformity is the dominating mandate of the Constitution. It is the prime maxim in almost every system of taxation, where justice and fair play are sought. It will not be interpreted out of the State's policy unless a clear legislative intention to that end is evinced.

Has the General Assembly in any of the acts referred to evinced an intention to depart from this general mandate of the Constitution and this general maxim of taxation generally? In this connection, two features of the revenue law are pointed out to me. It is said that by section three, above quoted, the capital stock of persons and corporations, such as complainants, are to be so valued by the State Board as to

ascertain their fair "cash value"; also that the provisions relating to the listing of railroad rolling stock, tracks, etc., in the several taxing districts show that railroads, at least, are to be regarded as a class apart. But neither of these features of the revenue law prove the point claimed. The second relates plainly, not to standards of valuation, or to uniformity or want of uniformity therein, but to the distribution among the districts of the fruits of taxation by whatever standard laid. The first—the cash value clause—is equally inconclusive when a comprehensive view of the entire taxing machinery of the state is taken.

That machinery begins with the listing of the property subject to taxation. This ordinarily is done by the local assessors, and extends to all classes of real property, moneys, credits, stocks and personal property generally. It is the first step towards ascertaining each citizen's rightful proportion of contribution due to the state under the constitutional provision already quoted.

But this assessment is made by different men in different districts. They may entertain divergent conceptions respecting the value of the same kinds of property; they may be unfairly prejudiced against individual tax-payers and unfairly inclined to favor others. To counteract the unequal conditions thus made possible, County Boards, or Boards of Review, have been created. It is the function of these boards to examine the assessments as of individuals, with a view to the correction of errors and inequalities, and to examine them as a whole with a view to determine their relative equality as between the different primary taxing districts. This is the first process of equaliza-

tion, and its prime purpose is to insure uniformity as between people of the same general taxing district.

But these local reviewing boards may themselves have divergent views respecting the values of the same kind of property, and thus unless there be a central Board of Equalization, there might creep in as between the different general taxing districts of the state, inequalities in taxation. Hence, a final reviewing board—the State Board of Equalization. It is elected one member from each congressional district, and its general function is to bring the assessments of the several districts to the same relative standard, so that no district of the state may be compelled to pay a disproportionate part of the state's taxes. It has no power to pass over the heads of the local equalizing boards to reach or change individual assessments. Its sole function is to bring about, as nearly as possible, a common level in the valuations throughout the state. Here again the prime purpose of the provision is uniformity.

Now, when the General Assembly came to laying a tax upon the capital stock of franchise corporations, there arose the necessity of lodging the power of initial assessments somewhere in the states' machinery. The assessment initially of the tangible property of these franchise corporations was left with the local assessors. But in the assessment of the capital stock, as an entirety, a difficulty appeared not present in the assessment of local properties. The franchise corporations in great part, are the railways of the state. They cross her entire area—north and south, east and west—running in and out of taxing districts. The capital stock of each, as distinguished from its tangible

property, is in its nature an entirety, and its valuation for taxing purposes could not, therefore, in the very nature of things be cut up into taxing districts. For the assessment of the capital stock of such corporations the initial assessor must necessarily be one whose jurisdiction comprehends the entire line within the state.

But though the section in question made the State Board, in this class of properties, the initial assessor and charged it with assessing such capital stock at its fair cash value, nothing, either in terms or by inference, is by the section taken from the board's general function and duty as an equalizer. There is in the section no evidence that the general assembly intended to deprive the board of this duty of equalization respecting capital stock. The employment of the words "cash value" is not in point; for cash value is made the primary basis of the valuation of other properties —properties finally equalized below such value—as well. Plainly the one thought in the mind of the general assembly in enacting section three was, in addition to laying such tax, to find a place where the power of initial assessment could be lodged so as to be effectively used; not intending thereby to throw out of adjustment the equalizing functions of the taxing machinery. In my opinion, uniformity is still the statutory policy of the state in the levying of taxes, with respect of franchise corporations, as well as of other properties. Accordingly, it was imperative that before the reassessments for 1900 were entered there should have been such deductions as would have equalized the valuation adopted with the valuations placed upon the other properties of the state. This cannot

be questioned on any view, to the extent that such deduction was necessary to equalize the assessment of the complainant corporations with the assessments of railroad corporations for the same year.

Now if we take the net earnings for 1900 (and this year does not appear to have been an exceptional one) as the basis of valuation, capitalize them at the ratio named—six per cent.—equalize this with the other property of the state by deducting thirty per cent., and then divide by five, according to the law in force, adding thereto the tangible property, we will arrive approximately at the real figures at which the assessments, including tangible property, should have been entered. Allowance, however, in these net earnings must be first made for the payment of the increased taxes, for to that extent, the net earnings reported do not disclose a fixed expenditure of the company for that year. The result in round figures can be stated as follows:

The reassessment for the Chicago Union Traction Company should have been about seven million seven hundred and sixty-three thousand dollars, or about six millions two hundred and fifty thousand dollars less than the reassessment complained of, and within four and one-half per cent. of the assessment of 1901.

That of the Chicago Consolidated Traction Company should have been about six hundred and twenty-one thousand dollars, or about three millions two hundred thousand dollars less than the reassessment complained of.

That of the People's Gas Company should have been about eight millions five hundred and one thousand dollars, or about four millions one hundred and thirty

thousand dollars less than the reassessment complained of, and within two per cent. of the assessment for 1901.

That of the Chicago City Railway Company should have been about four millions and fifteen thousand dollars, or about two millions one hundred and eight thousand dollars less than the reassessment complained of, and within five per cent. of the assessment for 1901.

That of the Chicago Telephone Company should have been about one million eight hundred and fifty thousand dollars, or about seven hundred and fifty thousand dollars less than the reassessment complained of, and within seven per cent. of the assessment for 1901.

That of the Chicago Edison Company should have been not to exceed one million eight hundred thousand dollars, or more than six hundred thousand dollars less than the reassessment complained of.

The South Chicago City Railway Company shows no net earnings; indeed it seems to have been operated at a loss. There is no basis, therefore, upon which to assess the capital stock over and above tangible property.

Now what do these comparisons show? The disparity between the reassessments complained of and the figures at which they should have been entered, upon the basis of net earnings, runs from thirty to forty-seven per cent. In cases where the disparity is about thirty per cent. I might entertain the explanation that the board felt itself under no obligation to equalize the reassessments with the property of the other state,

hence the disparity. But, considered in connection with the other facts disclosed, the explanation is untenable. It does not explain the action of the board in cases where the disparity runs as high as forty-seven per cent.; and it is contradicted by the view of the board entertained three weeks later, in the assessment for the year 1901 when equalization was allowed. A significant circumstance too, tending to show what was the real judgment of the board as between the reassessments complained of and the assessments for 1901, is the fact that except in the case of the Edison Company the assessments for 1901 run only from two to seven per cent. apart from our calculation of assessments based upon earning power.

The sum of it all is, that by whatsoever causes brought about, the reassessments complained of did not in my opinion, express the real judgment of the State Board as on independent tribunal, and were therefore in effect, fictitious judgments, for the impeachment of which somewhere the law holds out opportunity to the parties injured; and the direct evidence of the members of the State Board called as witnesses, sustains this view. Is the remedy prayed for in the bills within the complainants' legal opportunities?

Taxes are enforced contributions levied by the state upon the property of individuals by virtue of its sovereignty, for the support of government and for the public needs. The money thus taken, until taken, is, as much as real estate or chattels, property within the meaning of the Constitution of the United States; and the taking of such money is a taking of property, as much so, for instance, as the taking of private land

for some public work authorized by some law of the state or of congress.

Due process of law, as applied to the cases under consideration, is the authorized procedure whereby the property of the individual can be taken by the state; it includes the initial authority to levy taxes; the purpose to which money thus raised is to be devoted; and the instrumentalities that distribute the burden upon the citizens. Ours is a government of laws and not of individual officers, or of boards, or of men.

Any substantial departure, therefore, in the collection of taxes, from the law, either as to the authority for a tax, or its purpose, or the provisions for the just distribution of its burdens, is a departure from due process of law; and the enforced collection of taxes, in the laying and distributing of which there is a substantial departure from law, is the depriving of a citizen of his property without due process of law.

A substantial step in the taxing process as fixed by the law of Illinois; a step essential to the equal distribution of the burdens of taxation; is the decision and judgment of the State Board of Equalization. The Board's place in the taxing system is that of a quasi judicial body. Its judgment affects, as keenly as that of any court, the property interests collectively of the several districts of the state, and directly and individually, of the persons and corporations owning franchises. No court can by its judgment grasp more completely what would otherwise remain the property of the individual. In no other tribunal can there be found apter illustration of the power of the state to compel the individual to deliver up his property under the stress of law. It needs no argument to show that

power, such as this, is only exercised rightly when exercised judicially.

The prime quality of every judgment, without which it is no judgment, is, that it is the final thought of the judge on the subject submitted, unaffected by extrinsic influences. This implies freedom of mind—not merely theoretically but practically—the freedom of mind that does not fear, that has no wish of its own, that sees nothing not seen through the lenses of the law. Judgments honestly made up in such an atmosphere, though subject to review for error, are due process of law; judgments affected by fraud or fear, however solemnly entered, are as nothing when weighed by the constitutional guaranties thrown around liberty and property.

It is urged, however, that the constitutional guaranty is a prohibition only against the state; that to the state is to be attributed nothing in the way of deprivation of life, liberty or property, except as such deprivation comes through the state's legislation; that the mere acts of the officers of the state, acts not based on legislation, under no circumstances can amount to a violation of this constitutional guaranty; and the following cases are cited in support of this view:

Virginia v. *Rives,* 100 U. S., 313,
Civil Rights Cases, 109 U. S., 3,
Missouri v. *Dockery,* 191 U. S., 165,
Barney v. *City of New York,* 193 U. S., 430,
Coulter v. *L. & N. R. R. Co.,* 196 U. S., 599.

The difficulty about these citations is, that except *Coulter* v. *L. & N. R. R. Co.,* the question presented here was not involved; and in *Coulter* v. *L. & N. R.*

R. Co., the question presented here is expressly left undecided. It is of course true that where, as in *Virginia* v. *Rives*, the state has provided a uniform system of selecting juries applicable to white and colored alike, the misconduct of a subordinate officer, whereby a jury is unfairly made up, will not make a case of deprivation, by the state, of life, liberty or property without due process of law, the action of the officer not having been adopted by the state. For it does not follow that the court reviewing the case in which the misconduct occurred will not correct the wrong, and thus restore to the injured one his right to a trial under due process of law. It is true also, that where the state has provided a method of condemning property under which, if enforced, no property would be taken without full compensation, the mere apprehension that the method will not be followed, whereby property would be taken without compensation, does not make a case of deprivation, by the state, of property without due process of law; for until the final court having power to review the condemnation proceedings has confirmed the thing apprehended, it cannot be said that the state has finally acted. Indeed, it can never be said that the state has done or confirmed a wrong, until the last word of the state, through the department that speaks for the state in the particular matter involved, has been spoken.

But when that last word has been spoken, whether it be by the legislature, or by a court having the last word to speak in the matter involved, or by the executive, the resulting effect upon the rights complained of is the act of the state—as much so, whether the word be spoken either by the executive or by the judiciary,

or by the legislature, as if the last word had been spoken by the people of the state in general convention.

Now the levying, assessment, and collection of taxes, is through the administrative boards of the state. So far as capital stock is concerned, the State Board of Equalization is the final board in the process. The word that board speaks is the last word of the state on the subject; for instantly that word is spoken, the tax is extended on the collectors' books, thus giving the collector power to enforce payment without any further proceedings—the assessment by the board and its extension by the collector amounting to execution, the process in this respect being different from the enforcement of taxes on real property. Illinois Revenue Statutes, Chapter 120, Sec. 156. *Conkling* v. *Springfield*, 132 Ill., 420. True, the assessment entered by this last executive board of the state may be impeached, as any other judgment is impeached, for fraud, duress, or coercion. That was the ground upon which the mandamus case proceeded. But such suit to impeach is not a part of the taxing process—not a part of the state's action toward levying, assessing, and collecting taxes. On the contrary a suit such as that is a distinct suit in equity, separate and apart altogether from the taxing process—a resort to the judicial power as a refuge from the executive; and when the suit is between citizens of different states, or is one that arises under the constitution and laws of the United States, the judicial power that may be invoked is the judicial power of the United States Courts.

It will not do in this connection to say that the judicial power thus invoked, when exercised by the

state courts, is still the voice of the state—that the state is not committed to the executive wrong complained of until its courts have spoken. Were there a right of appeal, *as a part of the taxing process,* from the State Board of Equalization to the courts, that view might prevail. But no such appeal lies. The suit is not to review the assessment, but to set it aside. The suit lies as surely in the United States Courts (the necessary basis of jurisdiction existing), as it does in the state courts. It is in every sense a resort to the courts, national or state, to protect the party complaining from what otherwise would be the consummated act of the state.

Let us see then how the suggestion, that the judicial power thus invoked, when exercised by the state, is the voice of the state, logically works out. The State Board, for illustration, without exercising any independent honest judgment, assesses the capital stock of A, and also the capital stock of B, thus depriving them both, but for judicial restraint, of due process of law. A is a citizen of a state other than the one where the tax is laid; B is a citizen of the state where the tax is laid. A therefore may bring his action in the federal court; B must bring his action in the state court. But though the federal court is no part of the state, the suits thus brought are identical in purpose. Can we say that so far as A is concerned, the action of the Board is the final act of the state, whereby the property would have been taken, without due process of law, but for the injunction suit in the federal court, but that so far as B is concerned, though the injunction suit is precisely of the same character, the act of the Board is not the final action of the state? Does the

finalty of the taxing act depend on the accident of citizenship?

But it may be suggested that this view would bring every complaint, respecting the assessment of taxes, before the United States court, on the ground that any departure from law, in the assessment of taxes, is the taking of property without due process of law. That suggestion confounds "due process of law" with another and entirely distinct right—the right to have the law in its details correctly interpreted and enforced. No attempt to comprehensively define "due process of law" has ever been attempted. Generally speaking, it may be said to be the structural plan of the law of the land, as distinguished from the details—the substantial steps and proceedings that characterize the law of the land as a system, as distinguished from the minutiae—but the courts have left themselves free to decide every case upon its own particular circumstances. And it seems clear to me that the taking of property without the honest independent judgment of the last body that has a right to speak for the state, in its process of assessing and collecting taxes—a body that confessedly is a quasi judicial body—is the taking of property without due process of law within the fourteenth amendment.

The sum of all this as applied to the cases under consideration is that the reassessments complained of do not embody the real judgment of the board, in either the assessment or the equalization of the capital stock of complainant for the year 1900; and that in the absence of such real judgment, the threatened collection of taxes on the basis of the fictitious entry, would

be to deprive complainants of their property without due process of law.

I have no doubt that complainants may intrench themselves against this invasion by the writ of injunction. One of the primary grounds of equity jurisdiction is to reach cases involving mistake, fraud or coercion, and the relief necessary to their correction. The cases under consideration come clearly within this jurisdiction. It is incomprehensible that the complainants may not avert this threatened invasion of their rights—that they must first yield and then turn prosecutors in a court of law to recover their loss. The fundamental guarantees of the Constitution must not be thus emasculated.

But injunctions issue as a matter of discretion and conscience, not of right. The court may always attach equitable conditions, and the cases under consideration present to my mind a situation where conditions should be required.

I am not unmindful of the fact that when the temporary injunction was granted, the original assessments for 1900 were much less than any fair administration of the law would have made them, and that complainants could not justly escape from this evasion of their just share of the burdens of taxation. Nor do I shut out facts known to all others, that the school funds—the first and most needful outlay for our rising citizenship—were running low, partly in consequence of the taxes withheld. Before the temporary injunction issued, therefore, I required the payment to the proper officers by the complainants, of their taxes for the year 1900, according to the following rule:

The basis shall be the true net earnings of the several complainants for the year covering April 1, 1900, proper allowance being made for depreciation and replacement, but not for extensions; and reduced further by the amount of additional taxes that the enforcement of this rule produces. Upon this basis the value of complainants' capital stock, including franchises and tangible property, shall be capitalized on a ratio of six per cent.; this equalized by reduction of thirty per cent., and then divided by five. The sums thus produced will be regarded as the true reassessments for the year 1900. Upon this the tax will be extended at the true rate for 1900, exclusive of interest and penalties, not to exceed eight and thirty-seven hundredths per cent. from which will be subtracted the taxes already paid, and the balance will be the sum required. I allow no penalties, for the reason that the reassessments complained of are void, and complainants could not reasonably pay until a proper basis was fixed, either by the board or the courts.

The taxes for the year 1900 having been calculated and paid upon the foregoing basis, a decree may be entered finding the equities of the case in favor of the complainants, and making the temporary injunction permanent; the complainants, however, being required to pay the costs of the suit.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, A. D. 1908.

No. 430. 121

SAMUEL B. RAYMOND, COUNTY TREASURER OF COOK COUNTY, ILLINOIS, AND EX OFFICIO COUNTY COLLECTOR OF COOK COUNTY, ILLINOIS; JOHN J. HANBERG, HIS SUCCESSOR AS SUCH COUNTY TREASURER AND COUNTY COLLECTOR, ET AL., APPELLANTS,

vs.

CHICAGO CONSOLIDATED TRACTION COMPANY.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS.

APPELLANTS' REPLY BRIEF.

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APPELLANTS' REPLY BRIEF.

Appellee's brief in this cause has been filed by the same counsel that filed the brief for appellee in the Chicago Union Traction Company case, No. 424. Appellee's brief here is but a duplicate under the same headings of the brief filed in the Chicago Union Traction Company case. We have answered counsel's various contentions in our reply brief in that case, and it remains here to consider only one feature special to this case, namely, counsel's argument to the effect that the payment of the tax extended against ap-

pellee would more than exhaust its net earnings for the year 1900.

There is no evidence as to what the net earnings of appellee were for the fiscal year ending April 1, 1900. The circuit court directed the master to make a computation of the net earnings of appellee for the fiscal year ending April 1, 1900. No evidence was produced in reference to the net earnings of appellee for that fiscal year, but instead of that the company produced certain figures which it is claimed tended to show its net earnings for the fiscal year ending December 31, 1900. There is nothing to show that the net earnings for the fiscal year ending December 31, 1900, were the same as the net earnings for the fiscal year ending April 1, 1900, but the claim rests entirely upon a bald assumption.

Again, there is no proof even as to the amount of the net earnings of appellee for the fiscal year ending December 31, 1900. One Fred E. Smith testified (Transcript, 33) that he was the auditor of the company, and that its books were kept under his supervision; that he had "examined the books and figured from them" the gross and net earnings of appellee for the year ending December 31, 1900. There is no evidence that Mr. Smith knew that the amount set forth in said statements represented the actual receipts and disbursements of the appellee, but merely the statement of the witness that the figures produced by the witness had been taken from the company's books. The statement produced by the witness Smith was clearly incompetent and did not tend to prove any fact in this case. Even had the books themselves been produced, they would have been incompetent. It is a familiar rule of law that books of account of a party are not evidence, except of charges made by the creditor against the debtor when they stand to each other in the relation of plaintiff and defendant. When a question of fact is at issue between the parties in a court, and that question does not involve the relation of debtor and creditor, such a

fact cannot be proved by a party's own books, for such books are merely the self-serving declarations of the party producing them and are incompetent under familiar rules of evidence. Numerous authorities in support of this proposition are cited in our original brief, page 146, and no attempt has been made by appellee's counsel to produce any authorities enunciating a contrary rule. Should we assume, however, that these items are competent for what they show, they fail to establish the contention of appellee's counsel.

The gross earnings of appellee for the year ending December 31, 1900, amounted, according to these books, to $1,041,284.81. There are charged off against the gross income many items which the evidence wholly fails to show should be properly deducted. For instance, there is an arbitrary deduction of six per cent. for a depreciation of the tangible property of the appellee amounting to $103,572.86. In order that the court may reach the conclusion that the six per cent. item for depreciation is correct, we must indulge in assumption upon assumption.

In the first place, there is no evidence that for the fiscal year ending December 31, 1900, there was any depreciation in the company's plant, and in the next place should we assume that there was such depreciation, how can the court adopt the arbitrary figure of six per cent.?

Again, we find (Transcript, p. 37) there is charged out as maintenance expense an item of $59,490.27. There is no evidence that after the payment of that large sum for maintenance there was any depreciation in the company's property. For aught the evidence shows, the property may have been in a better condition after the expenditure of the above amount than it was at the beginning of the year, and, if so, no allowance should have been made for depreciation.

But all this talk about the net income of appellee is wholly beside the question here at issue, for the statutes of Illinois require that appellee should be assessed upon the fair cash market value of its capital stock and bonded indebtedness

as it was on April 1, 1900. There is not a particle of evidence in this record that the assessment made by the State Board of Equalization was not based upon the fair cash market value of the stock and bonded indebtedness of the appellee and its lessor corporations on April 1, 1900. If that be true, then the assessment will be sustained in this court, even though the company was insolvent and not in the receipt of any net income. That proposition was expressly decided by this court in the State Railroad Tax cases, 92 U. S., 575, a full discussion of which will be found in our original brief in the Chicago Union Traction Company case, page 133.

We have pointed out in our original brief in this case, pages 35 and 36, that even on the theory of equalizing the assessment made on the capital stock and franchises of the appellee and its lessor corporations at 70 per cent. of its value, disregarding interest and penalties and deducting the amount of all taxes previously paid, appellee is still indebted to the appellants in the sum of $183,114.80.

We respectfully submit that, in any view of this case, the decree of the circuit court was erroneous, and that its judgment should be reversed.

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